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No.

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1996

ROBERT S. CATZ,

Petitioner,

v.

TRIAL COMMISSIONER JOSEPH R. McDONALD, DOMESTIC RELATIONS DIVISION OF THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIMA, ARIZONA, SUSAN R. CHALKER (Real Party of Interest), FIDELITY INVESTMENTS, TEACHERS INSURANCE ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITY FUND, AND WATERHOUSE SECURITIES, INC.

Respondents.

Petition for Writ of Certiorari to the Arizona Court of Appeals, Division Two

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10 pp

I. QUESTION PRESENTED

Did the Arizona divorce court deprive petitioner of the fundamental and historic right to defend deeply rooted at common law and in the Due Process Clause of the Fourteenth Amendment to the United States Constitution when it:

> (1) authorized under color of Arizona's Domestic Relations Injunction Act, A.R.S. § 25-315, without *any* bond requirement, the ex parte prejudgment seizure of his property and those of his non-party adult children solely upon the mere filing of one-sided, self-serving and conclusory affidavits claiming exigent circumstances, without *any* probable cause showing and adjudication that the party seizing the property is likely to prevail on the merits by clear and convincing evidence, and without *any* opportunity for a prompt, expeditious and immediate post-seizure hearing of *any* kind to put the party who sought the seizure to her burden of establishing her entitlement to continued relief pending entry of final judgment;
>
> (2) vacated his pro se motion to dismiss the divorce proceeding under Article IV § 1 of the United States Constitution as part of a coercive and grossly excessive default judgment sanction of contempt for his non-willful failure to comply with a court order requiring him to attend a deposition in which he was not provided with *any* prior notice;
>
> (3) conducted an evidentiary hearing and trial on the merits in his absence without *any* prior notice to him

in support of a coerced default judgment imposed as a contempt sanction and entered final judgment which voided a prior Ohio divorce decree on grounds of fraud in clear violation of the Full Faith and Credit Clause, Article IV § 1 of the United States Constitution when it neither considered nor applied the law of the rendering State of Ohio which requires that a party collaterally attacking a final judgment do so by clear and convincing evidence; and

(4) deprived him of *any* opportunity for direct appeal by belatedly returning unfiled, after the time to notice an appeal had expired, his timely pro se motion to alter or amend the final judgment when he attempted to proceed *in forma pauperis* under Boddie v. Connecticut?

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PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

Petitioner Robert S. Catz respectfully prays that this Court issue a writ of certiorari to review the final judgment of the Arizona Court of Appeals, Division Two, entered on May 2, 1996. On October 25, 1996 the Arizona Supreme Court denied a timely petition for review.[1]

II. OPINIONS BELOW

The final order of the Arizona Court of Appeals, Division Two, denying petitioner's petition for special action in the nature of mandamus relief is unreported. (App.53) The final order of the Arizona Supreme Court denying petitioner's petition for review is unreported. (App.56) Both orders are reproduced in the Appendix hereto.

III. JURISDICTION

The Arizona Supreme Court entered its final judgment denying petitioner's petition for review on October 25, 1996. On January 10, 1997 Justice O'Connor entered an order extending the time in which to file this petition to and including February 22, 1997. This petition for writ of certiorari is filed within the time allotted by Justice O'Connor's order of January 10, 1997. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

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[1] **These proceedings call into question the constitutionality of an Arizona statutory scheme, Ariz. Rev. Stat. § 25-315. Pursuant to S.C. Rule 29.4(c), petitioner certifies that he served three copies of this petition on the Attorney General of Arizona as required by 28 U.S.C. 2403(b).**

IV. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment, U.S. Constitution, provides in relevant part:

> No State shall . . .deprive any person of life, liberty, or property, without due process of law; . .

Ariz. Rev. Stat. § 25-315 D & F provide in relevant part:

> D. The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No bond shall be required unless the court deems it appropriate
>
> F. A temporary order or preliminary injunction:
>
> 1. Does not prejudice the rights of the parties or any child which are adjudicated at the subsequent hearing the proceeding.
>
> 2. May be revoked or modified before final decree [of dissolution] on a showing by affidavit of the facts necessary to revocation or modification of a final decree under § 25-327 and as provided in Rule 65 of the Rules of Civil Procedure.[2]

V. STATEMENT

Petitioner Robert S. Catz and respondent Susan Chalker were divorced in the Cuyahoga County (Cleveland,

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[2] **The complete text of Ariz.Rev. Stat. § 25-315 is reproduced in the Appendix herein. (App. 58-63)**

Ohio) Court of Common Pleas on April 10, 1989.[3] (App.21)

Without disclosing the existence of the prior Ohio decree, respondent Chalker filed a preemptive divorce action against petitioner Catz in the Pima County (Tucson, Arizona) Superior Court more than five years later on November 4, 1994.[4] Upon the mere filing of the petition for divorce the clerk of the Arizona divorce court automatically executed a mandatory and ministerial preliminary injunction under his signature and seal, without any judicial supervision issued as an order of the court enforceable by contempt and prosecution for the crime of interference with judicial proceedings, which under Ariz. Rev. Stat. § 25-315A (App.24) requires him to issue in every divorce action without prior notice, probable cause, an opportunity for some kind of hearing or a bond. The injunction provide that "petitioner and respondent named above, as parties to the action, are enjoined from and shall not: (a) Transfer, encumber, conceal, sell or otherwise dispose of any of the joint, common or community party of the parties, except in the usual course of business or for necessities of life, without the written consent of both parties or permission of the court". (App.24-25)

In addition to the November 4, 1994 mandatory preliminary injunction issued by the clerk, on December 1, 1994, respondent Chalker also filed an ex parte motion for a temporary restraining order without notice (R.84).[5] On the same day, the chief judge of the divorce court issued an ex

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[3] **Catz v. Catz, No. D190173(C.P. Cuyahoga Cty., Ohio)**

[4] **Chalker v. Catz, No. 10365 (Super. Ct. Pima Cty. , Ariz.)**

[5] **"(R. __)" refers to the Petitioner's Documentary Record Appendix filed with the Arizona Court of Appeals.**

parte "Temporary Restraining Order Without Notice" (App.26) sequestering assets held in trust for petitioner and his non-party adult children[6] by stakeholder respondents Fidelity Investments, Teachers Insurance Annuity Association/College Retirement Equity Fund, and Waterhouse Securities. The order issued without a court reporter present.

The chief judge of the divorce court issued the ex parte temporary restraining order without any prior notice, as expressly authorized by Ariz. Rev. Stat. § 25-315 D and F, without requiring any posting of bond or security to protect against the erroneous deprivation of property. Neither the temporary restraining order nor the Arizona statute make any provision for a probable cause showing

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[6]The non-party adult children from a previous marriage, Tennessee residents, were never named as parties or served with any legal process, the temporary restraining order, or any other pleadings filed in the divorce action in violation of the constitutional notice requirements of Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 680 (1950) and Shaffer v. Heitner, 433 U.S. 186(1977). (App. 26-28) The state court record reflects that stakeholder respondent Fidelity Investments has refused, because of the notice and service defects, to turnover the sequestered assets belonging to petitioner's non-party adult children to respondent Chalker. Nonetheless, the sequestered assets have now been beyond their reach for more than two years without some kind of hearing. The ex parte temporary restraining order provides that the injunction shall be served" forthwith." (App.28). The record reflects that respondent Fidelity Investments, TIAA-CREF and Waterhouse Securities were served the next day with the temporary restraining order specifically naming and joining them as co-defendants. The state court record also establishes a willful violation of the December 1, 1994 order, in that respondent Chalker's divorce lawyers deliberately waited more than a week until December 8, 1994 before even providing a copy of the ex parte "Temporary Restraining Order Without Notice" to their designated private process server appointed by respondent Chalker to serve petitioner. (R.144).

that respondent is likely to prevail on her claim, nor does it require any kind of immediate, expeditious or prompt post-seizure hearing nor does it require the posting of security or bond. The extra-territorial ex parte temporary restraining order issued without notice under Ariz.Rev.Stat. § 25-315 specifically provides that petitioner is "enjoined and prohibited from payment, withdrawal and/or disbursement whatsoever, of any funds, stocks, bonds, notes or other property, however it may be denominated and where, which may be in his possession and or control in the names of Robert Steven Catz" and his non-party adult children "in which [petitioner] has an interest whatsoever, no matter how denominated and wherever located". . . . and "shall issue without bond and shall continue in force and effect until further order of the Court.(App.27-28).(Emphasis added)

Petitioner was not served with legal process until December 14, 1994, some 40 days after the commencement of the divorce action and 14 days after the issuance of the ex parte temporary restraining order. Within three hours of being served, petitioner proceeding pro se, filed an emergency motion to dismiss the action on the grounds that the Ohio decree was entitled to full faith and credit under Article IV §1 of the United States Constitution. (App.29)

On December 14, 1994, respondent trial divorce court commissioner McDonald, acting in his capacity as a superior court duty judge reviewed the divorce court's pleadings file and determined that respondent Chalker had not disclosed the existence of the Ohio decree on the record at the time the chief judge of the domestic relations division issued the temporary restraining order. Finding "good cause"(App.32) based upon petitioner's representation that

he would have to suspend operation of his business for want of operating capital, that he would be unable to pay his rent, utilities, and other necessities of life and financial obligations, and that he would be unable to pay child support because of the restraining order, respondent trial divorce court commissioner McDonald scheduled an expedited hearing for the following week on pro se petitioner's emergency motion to dismiss for Monday, December 19, 1994. (App.32)

Two days later, on Friday morning, December 16, 1994, petitioner received a telephone message on his office voice mail from a secretary calling from the chambers of the chief judge of the domestic relations division, the same judicial officer that had previously issued the ex parte temporary restraining order without notice on December 1, 1994, informing him that the divorce court had issued a sua sponte order continuing the emergency hearing from December 19, 1994, until January 11, 1995.(R.68)[7] Almost five months later on May 5, 1995, one of respondent's divorce lawyers unabashedly disclosed in an affidavit in support of his application for attorneys fees that he was a judge pro tempore of the domestic relations division of the Pima County superior court since 1985, and further claimed time in his affidavit for attendance at a private ex parte conference with the chief judge conducted off the record on the very morning that the chief judge's secretary called petitioner to inform him that the "emergency" hearing scheduled by respondent McDonald for 8:30 a.m. Monday, December 19, 1994 was cancelled sua sponte. (R.105-107)[8]

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[7]**The record reflects that the sua sponte order was not filed with the Clerk of the Superior Court until December 22, 1994.**

[8]**Specifically, on May 5, 1995 respondent Chalker's divorce law-**

Because of the abrupt and inexplicable cancellation and delay of the "emergency" hearing, petitioner could no longer meet his ongoing financial responsibilities; the proceedings rescheduled for January 11, 1995 -- some 41 days after the ex parte temporary restraining order without notice placed substantially all of his assets beyond his reach -- would come too late in the day. Without access to the sequestered funds petitioner was unable to retain a divorce attorney, was unable to meet his basic necessities of life and was rendered homeless, was forced to immediately suspend operation of his business for want of operating capital, place his belongings in storage, vacate his Tucson

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yers from two separate law firms filed an affidavit in support of attorneys fees for services rendered from October 15, 1994 to March 14, 1995 for hours expended by four lawyers, several paralegal/law students, support staff and private investigators in the amount of $43,308.92 for a divorce judgment secured by default in proceedings that petitioner only filed two substantive motions. The motion was granted in that amount by respondent McDonald on January 16, 1996. The attorney fees affidavit attested that on Friday, December 16, 1994 respondent Chalker's attorney attended a private "[c]onference with Judge Alfred and secretary," followed later that morning with a "[c]onference with Marissa, Judge Alfred's secretary"(R.106), the chief judge of the domestic relations division, the same judicial officer that issued the December 1, 1994 ex parte temporary restraining order without notice. The off the record private"conferences" with the chief judge of the domestic relations division of the superior court and his secretary were conducted without any notice to petitioner, and took place on the very morning the chief judge's secretary called to inform him that the emergency hearing scheduled for Monday, December 19, 1994 was continued to January 11, 1995. Further, the fee affidavit disclosed for the first time that respondent 's lead divorce lawyer was a judge pro tempore of the domestic relations division of the superior court since 1985. (R.105-108)

apartment, and relocate to Nashville, Tennessee, to reside with this oldest son. (R.68)[9]

Following the January 18, 1995 entry of the remand order by the Arizona district court petitioner noticed his change of address with the clerk of the superior court and opposing counsel on January 27, 1995. (R.12)

On January 27, 1995 respondent Chalker's divorce lawyers filed a motion to continue the "emergency" hearing now re-scheduled to hear petitioner's motion to dismiss for February 16, 1995. On January 31, 1995 petitioner mailed two separate pro se oppositions to the continuance because his assets would now be seized for more than 60 days

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[9] **Frustrated and obstructed by the divorce court's clear refusal to vindicate clearly established rights to a prompt, immediate and expeditious post-seizure hearing, petitioner turned to the federal courts to enforce rights that would be lost in the pending divorce action. See, Lynk v. LaPorte Superior Court, 789 F.2d 554, 559-564 (7th Cir.1986) (Posner, J.)(discussing Catch-22 jurisdiction and misapplication of the "Rooker-Feldman" and "Domestic Relations Exception" doctrines). Relying on Lynk, on December 19, 1994, petitioner filed a petition to remove the divorce proceedings to federal court pursuant to 28 U.S.C.§ 1441(b) (federal question). Chalker v. Catz, No. 94-872-TUC-ACM (D.Ariz.).**

On January 18, 1995, the district court entered an order remanding the case back to the state divorce court for lack of subject matter jurisdiction. The district court relied on the "domestic relations exception" doctrine under Ankenbrant v. Richards, 504 U.S. 689 (1992), even though removal was invoked under federal question and not diversity jurisdiction. Federal question removal was based on respondent Chalker's affidavit filed in support of the temporary restraining order which alleged a due process notice defect in service of summons in the 1988 Ohio divorce proceedings. Mullane v. Central Hanover Bank & Trust Co. 339 U.S. 306 (1950). Respondent's affidavit stated that at "no time have I ever been served with a petition for dissolution or similar pleading nor any judgment purporting to enter a divorce between myself and Robert S. Catz."(R. 96)

without any kind of hearing. On February 3, 1995 the clerk of the court mailed petitioner's pro se oppositions back to him without explanation. (R.13)

On February 6, 1995 respondent trial divorce court commissioner McDonald granted respondent Chalker's motion for a continuance and rescheduled the hearing for March 14, 1995. The assets would now be sequestered for more than 103 days without some kind of post-seizure hearing. (App.33) Even though the only noticed purpose of the February 6th proceeding was to consider the continuance motion, and even though both respondent McDonald and respondent Chalker knew as a matter of record the petitioner now resided in Nashville, Tennessee, the divorce court nonetheless issued a sua sponte order compelling petitioner to appear for deposition in Tucson, Arizona, in three days on February 9, 1995 or face sanctions. The order was entered on February 6, 1995.(App.33) The clerk however did not mail the order to petitioner until February 7, 1995. (R.25) It arrived in Nashville on February 11, 1995, two days after the date of the scheduled deposition. (R.68)

On February 10, 1995, respondent Chalker filed a motion for sanctions and contempt along with a notice of hearing that failed to specify the date and time for the hearing. (R.26) Respondent Chalker's counsel mailed the motion and notice of hearing to petitioner on February 15, 1995, although the proof of service certified that it had been mailed on February 10, 1995.(R.27-28) The motion and notice of hearing arrived in Nashville on February 21, 1995. (R.72)

Without any prior notice to petitioner from the divorce court or respondent's counsel, respondent trial

divorce court commissioner McDonald conducted a hearing on respondent Chalker's motion for sanctions on March 2, 1995. It found petitioner in "contempt" of court for his "willful" failure to comply with the order of February 6, 1995, compelling his attendance three days later for a deposition in Tucson. (App.36) As a further sanction respondent McDonald also vacated petitioner's pro se motion to dismiss, granted respondent partial default judgment, and set an evidentiary hearing on the default judgment for March 14, 1995. (App.36-39)

Respondent trial divorce court commissioner McDonald executed the minute order on March 2, 1995, but the clerk did not formally enter it on the docket until March 10, 1995. (App.36). The minute entry was sent to petitioner by first class mail that day, arriving in Nashville on March 14, 1995, the very day of the scheduled default evidentiary hearing. (R.68)

Despite the failure to provide timely and adequate prior notice to pro se petitioner, respondent McDonald nonetheless proceeded with the default hearing on March 14, 1995. At hearing, without a scintilla of clear and convincing evidence, the divorce court held the 1989 Ohio decree "null and void" on grounds that pro se petitioner, while an active member of the Ohio bar and an officer of this Court had "fraudulently obtained" a divorce from the Ohio divorce court in Catz v. Catz, No. D-191073 (CCP Cuyahoga Cty., Ohio filed April 10, 1989) (App.42), in violation of Article IV § 1 of the U.S. Constitution by failing to give the Ohio judgment the same preclusive effect it would be entitled to under the law of the rendering State of Ohio [Humble v. Brown, 368 N.E.2d 294, 296 (Ohio 1977) (clear and convincing evidence standard for fraud)] as

required by this Court in Durfee v. Durfee, 375 U.S. 106, 109 (1963); Aldrich v. Aldrich, 378 U.S. 540 (1964) and Williams v. North Carolina, 325 U.S. 226, 233-34 (1945). (R.108-130) The divorce court also granted respondent Chalker a final decree of dissolution (App.42-46), $1,000 a month in alimony, awarded her sole custody of the parties minor son, along with $700 a month in child support, denied petitioner any right to visitation except at the sole discretion of respondent Chalker, and ordered the transfer of all of the assets belonging to petitioner, as well as the assets belonging to his non-party adult children sequestered by the ex parte temporary restraining order without notice of December 1, 1994, an amount in excess of $700,000. (App.44) Further, the Arizona record reveals that respondent McDonald denied the Ohio decree full faith and credit without ever receiving into evidence an authenticated copy of the record of Ohio proceedings as required by 28 U.S.C. § 1738 which would show that respondent Chalker had been properly served in 1988 at her attorney registration address she provided to the Florida and District of Columbia Bars.

Petitioner received the March 14, 1995 final judgment of divorce entered by default in Nashville on March 18, 1995 by certified mail. (R.68)

On March 28, 1995 petitioner, now permanently stripped naked of all his assets and totally indigent, sent a timely verified combined pro se motion to alter or amend the judgment and/or relief from judgment, pursuant to Rules 59 and 60 of the Arizona Rules of Civil Procedure (R.65-66), asserting the due process notice, procedural and mailing irregularities as grounds for relief, along with a pro se motion and supporting affidavit of poverty to proceed *in forma pauperis* under Boddie v. Connecticut, 401 U.S. 371

(1971). (App.47-49) The pleadings were timely delivered the next day to the clerk of the superior court by Federal Express. (R.88)

Two weeks later, on April 11, 1995, the clerk returned all of petitioner's pro se pleadings, along with a preprinted questionnaire required of litigants unable to pay fees and costs. (R.59-66) The clerk's package arrived in Nashville, on April 14, 1995; it provided no explanation for the clerk's decision to return the combined Rule 59/60 motion unfiled. (R.59)

Rule 59 of the Arizona Rules of Civil Procedure allows a party 15-days to file a motion to alter or amend the judgment; it also tolls the 30-day period for filing a notice of appeal until such time as the rendering court denies the motion. The clerk's belated and inexplicable failure to file his timely combined Rule 59/60 motion consequently deprived petitioner not only of the tolling period, but of his ability to perfect an appeal, the 30-day period having expired on April 13, 1995.

Having thus been deprived of his right to file a direct appeal from the default judgment, petitioner -- along with his adult children, Nashville, Tennessee residents -- filed an original action in the United States District Court for the Middle District of Tennessee on October 2, 1995 under Tennessee's long-arm statute, seeking declaratory and injunctive relief from the enforcement of the Arizona judgment on the grounds it was secured without plaintiffs being afforded a full and fair opportunity to be heard before the Arizona divorce court in violation of the Due Process Clause of the Fourteenth Amendment.[10]

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[10] **Shawn D. Catz et al v. Chalker, Fidelity Investments, Teachers Insurance Annuity Association-College Retirement Equity Fund,**

On October 20, 1995 the federal district court issued a status quo temporary restraining order enjoining the enforcement of the Arizona judgment pending a full evidentiary hearing and decision on a motion for a preliminary injunction.

On February 7, 1996, following a three day evidentiary hearing, the district court wrote that "the lack of notice of the Arizona state proceedings, calloused treatment, collusion, unilateral hearings, and draconian measures taken in [petitioner's] absence are shocking. Apparently, [petitioner has] never had a hearing on the merits of his claims."[11] (App.12) The Tennessee district court nevertheless felt compelled to dismiss the action for want of subject-matter jurisdiction under the "Rooker-Feldman"[12] and "Domestic Relations Exception"[13] doctrines, noting that "although the violations alleged by plaintiffs are egregious. . . . relief for their claims is appellate review in the state court system and writ of certiorari to" this Court under 28 U.S.C.§ 157.[14] (App.18) (Emphasis added) Following the Tennessee district court's dismissal on jurisdict-

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& Waterhouse Securities, No.CV 3-95-947(M.D. Tenn.) (App.1-20)

[11] Id. (App.12)

[12] District of Columbia Court of Appeals v. Fidelity Trust Co., 460 U.S. 462 (1983) (Stevens,J. dissenting); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) (federal review of state court judgment available only under 28 U.S.C. §1257). See, ARASCO, Inc. v. Kadish, 490 U.S. 605 (1989).

[13] Barber v. Barber, 43 U.S. 689(1923); In re Burris, 136 U.S. 586 (1890); Ankenbrandt v. Richards, 504 U.S. 689(1992) (federal courts have no judicial power over "core"issues of divorce matters).

[14] An appeal from the jurisdictional dismissal is currently pending in the Sixth Circuit. Catz et al v. Chalker et al. No. 96-5776(6th Cir.).

diction and abstention grounds petitioner sought extraordinary relief in the nature of mandamus/prohibition by returning to the Arizona courts by filing on April 1, 1996 an original petition for special action in the Arizona Court of Appeals seeking to void the March 14, 1995 default judgment, the December 1, 1994 ex parte temporary restraining order issued without notice, and the March 10, 1995 contempt-sanction order on the grounds that petitioner was denied any and all opportunity for some kind of post-seizure hearing of the taking of his assets before permanent deprivation and that the "shocking" combined procedural and notice irregularities in the "draconian" divorce court proceedings violated the Due Process Clause of the Fourteenth Amendment.[15] Without reaching the merits of the constitutional and other state law claims presented or providing any statement of reasons, the Arizona Court of

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[15] **Catz v. Chalker et al., No. 2 CA-SA-96-0051(Ariz.App.Div.2). Under Ariz.Rev.Stat §12-201, the Arizona court of appeals has original jurisdiction to hear a petition for special action in the nature of common law writs of mandamus and prohibition collaterally attacking a judgment wanting in due process where no legal remedy or adequate remedy is available by direct appeal. Cravens, Dargan & Co. v. Superior Court, 737 P.2d 1373(Ariz.1987). Under Arizona law, a judgment void as wanting in due process can be attacked at anytime. Phoenix Metals v. Roth, 737 P.2d 1373(Ariz. 1987). Special action petitions may be invoked to challenge the constitutionality of a state statute. Zamora v. Reinstein, 915 P.2d 1227,1229(Ariz.1996). The federal question brought to this Court was fairly presented in the original special action petition filed in the Arizona Court of Appeals (App.50), and the due process question presented here was expressly preserved and fairly presented to the Supreme Court of Arizona. (App.54). S.C. Rule14.1(g)(i).**

Appeals summarily declined to exercise its discretionary jurisdiction on May 2, 1996. (App.53)

Petitioner timely filed a pro se petition on May 17, 1996 seeking a review of the final judgment of the Arizona Court of Appeals. On October 25, 1996, the Arizona Supreme Court denied review. (App.56)

On January 10, 1997 Justice O'Connor issued an order granting petitioner's motion to extend the time for filing the petition for writ of certiorari to and including February 22, 1997.

This timely petition for a writ of certiorari to the Arizona Court of Appeals follows.

VI. REASONS FOR GRANTING THE PETITION

I. THE "DRACONIAN" ARIZONA DIVORCE COURT JUDGMENT WAS RENDERED IN A MANNER SO PATENTLY REPLETE WITH "SHOCKING" AND "EGREGIOUS" VIOLATIONS OF FUNDAMENTAL CONSTITUIONAL NORMS AND STANDARDS AS TO MAKE A FARCE AND MOCKERY OF RIGHTS CLEARLY ESTABLISHED BY THIS COURT DEPRIVING THE JUDGMENT OF ANY CONSTITUTIONAL VITALITY UNDER THE FOURTEENTH AMENDMENT

This case involves an extraordinary assertion and arbitrary exercise of state judicial authority that strikes at the very core of the Supremacy Clause and the constitutional guarantee of due process of law. The federal district court which considered the due process challenge to the default divorce judgment at issue here after conducting a

three day evidentiary hearing, in which respondent Chalker declined to attend as a witness and subject herself to direct and cross examination, characterized the procedural history of this case for its total "lack of notice [of the Arizona state proceedings], calloused treatment, collusion, unilateral hearings, and draconian measures taken in [petitioner's] absence are shocking. Apparently, [petitioner has] never had a hearing on the merits of his claims." Shawn Catz, et al. v. Chalker, No. 3-95-CV-947 (M.D. Tenn.).(App.12) Notwithstanding these clear constitutional violations, the district court nonetheless concluded, however, that it lacked subject matter jurisdiction under the "Rooker-Feldman" and "Domestic Relations Exception" doctrines to grant relief because federal review of final state court divorce judgments is available only in this Court under 28 U.S.C. § 1257. See, ARASCO,Inc. v. Kadish, 490 U.S. 605 (1989).

This Court therefore appears as the final and only bulwark against a state court default judgment rendered in a manner which disregards and makes a face and mockery of a long and unbroken line of decisions of the Court protecting bedrock and clearly established fundamental and core due process rights under the Fourteenth Amendment.

A. The Ex Parte Prejudgment Taking of Property Without Probable Cause and the Total Absence of Any Opportunity for a Prompt, Immediate and Expeditious Post-Seizure Hearing and Bond Requirement to Protect Against the Severe Consequences of an Erroneous Deprivation

Based on self-serving, one-sided conclusory affidavits which failed to candidly disclose the existence of the 1989

Ohio divorce decree [which was in the physical possession of respondent Chalker's divorce lawyers since at least November 9, 1994 (R.4)], and without requiring *any* security to protect against the erroneous deprivation of property, the Arizona divorce court issued an ex parte prejudgment "Temporary[16] Restraining Order Without Notice" pursuant to Ariz. Rev. Stat. § 25-315 D & F which dispossessed petitioner of virtually all of his assets and those of his non-party adult children until "the final decree is entered or when the petition for dissolution is dismissed," without *any* opportunity for a prompt, immediate and expeditious post-seizure hearing to contest its propriety and without *any* probable cause showing that respondent Chalker was likely to prevail on the merits of her claim by clear and convincing evidence under the law of the rendering state of Ohio.[17] Humble v. Brown, 368 N.E.2d 294 (1977).

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[16]**Under Ariz. Rev. Stat. §25-315 there is nothing "temporary" about a domestic relations restraining order. The purpose of an injunction under the statute is prohibit actions by married parties that would result in dissipation of the marital estate or place marital assets beyond the reach of the Arizona courts. Lonergan v. Strom, 700 P.2d 893, 896-97(Ariz.App.1985). In Granny Goose v. Teamsters, 415 U.S. 423, 439(1979) the Court observed that "ex parte restraining orders are no doubt necessary in certain circumstances, but under federal law they should be restricted to serving the underlying purpose of preserving the status quo and preventing irreparable harm *just so long as is necessary to hold a hearing, and no longer.* (Emphasis added)**

[17]**In addition to Ariz. Rev. Stat. §25-315 several of the states have enacted special domestic relations injunction statutes identical or similar to the Arizona statutory scheme which make no provision for a prompt, expeditious and immediate post-seizure hearing following the issuance of a restraining order without notice or requiring bond to protect against erroneous deprivation of property.See,Colo.Rev.Stat.§14-108(1996);Del.Code.§1509(1995); Ill.Comp.Stat.§5501(1996); Ky. Rev. Stat. §403.160 (1996) ; Minn.**

The Arizona statutory scheme on its face and as applied to the taking of petitioner's property, and that of his non-party adult children, cannot be reconciled with a long line of decisions rendered by this Court reviewing due process challenges to a variety of summary prejudgment remedial devices enacted by the state legislatures.

Beginning with Sniadach v. Family Finance Corp., 395 U.S. 337 (1967), this Court has examined the constitutional validity of a host of summary remedies authorizing the prejudgment taking of property as here. See, e.g., Fuentes v. Shevin, 407 U.S. 67 (1972); Mitchell v. W.T. Grant, 416 U.S. 699 (1974); North Georgia Finishing v. Di-Chem, 419 U.S. 601 (1975); Connecticut v. Doehr, 501 U.S. 1 (1991); United States v. James Daniel Good Real Property, 510 U.S. 43 (1993). These cases, drawing on earlier precedent, have established fundamental core constitutional principles regarding the due process implications of statutory prejudgment seizure remedies:

Due process protections extend to any significant property interests and any significant taking of property. Boddie v. Connecticut, 401 U.S. 371, 379 (1971); Goldberg v. Kelley, 397 U.S. 254, 255 (1970);

Individuals whose liberty or property interests are affected are entitled to an opportunity to be heard. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-315 (1950);

The opportunity to be heard must be provided at a meaningful time and in a meaningful manner. Armstrong v. Manzo, 380 U.S. 545, 552 (1965);

Stat.§ 518.091(1996); Mo.Stat. § 452.315(1995); Mont.Code§ 40-4-121(1995); S.D.Code §25-4-33.1(1996); Wash.Code §26.09.060 (1996); W.Va.Code §48-2-34(1996); Wyo.Stat.§20-2-109(1996).

Notice and a hearing before a deprivation of property may be postponed in "extraordinary situations" but only if an immediate and prompt opportunity for a post-seizure hearing is provided under a narrowly drawn statute. Connecticut v. Doehr, supra at 10-12.

This Court has thus steadfastly adhered to the principle that persons affected by the taking of property are entitled to some kind of post-seizure hearing, expeditious, prompt or immediate, at some point in time before the final and permanent taking of property as a matter of constitutional law.

Surely presumptively divorced parties[18] are to be afforded the same minimal constitutional protections and safeguards afforded alleged marijuana smugglers, Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 517 (1974) (ex parte seizure of yacht allegedly used for smuggling); convicted prisoners, Hudson v. Palmer, 468 U.S. 517 (1984) (state must provide post-deprivation remedy when prisoner alleges property taken by prison personnel); drunk drivers, Mackney v. Montryn, 443 U.S. 1 (1979) (suspension of driver's license requires prompt post-suspension hearing); horse trainers, Barry v. Barchi, 443 U.S. 55 (1979) (interim suspension of trainer's license following positive test of horse for drugs requires prompt post-suspension hearing); public high school students, Goss v. Lopez, 419 U.S. 565 (1975) (students removed from

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[18] **By virtue of the presumptively valid 1989 Ohio divorce decree, Williams v. North Carolina, 325 U.S. 226,233-233-34(1945), respondent Chalker could claim no cognizable interest in the sequestered "marital" assets at the time that the ex parte temporary restraining order without notice was issued. Further under Arizona law a prior divorce decree is entitled to be treated as presumptively valid. Carnahan v. Carnahan, 290 P.2d 729,730-31(Ariz.1950).**

public school for alleged misconduct posing danger to others entitled to post-suspension hearing within 10 days); disability recipients, Mathews v. Eldridge, 424 U.S. 319 (1976) (state must provide prompt post-termination hearing to recipient of disability benefits); public employees, Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985)(terminated public employee entitled to post-discharge hearing).See, H.Friendly, Some Kind of Hearing, 123 U. PA. L. REV. 1267, 1301-02 (1975); R.Catz & E.Robinson, Due Process and Creditor Remedies: From *Sniadach* ,and *Fuentes* to *Mitchell, North Georgia* and Beyond, 28 RUTGERS L.REV.541(1975).

In Connecticut v. Doehr, 501 U.S. 1, 18-23 (1991) (White, J. separate plurality opinion joined by Marshall, Stevens and O'Connor, JJ.) four members of this Court expressed the view that the Due Process Clause requires a bond or security requirement to protect against erroneous deprivation of property. Following this Court's decision in Doehr, the Second Circuit, Tenth Circuit and the Connecticut Supreme Court have rendered conflicting decisions with the First Circuit and the Rhode Island Supreme Court on the precise question left unresolved by this Court and subsumed within the larger due process question presented here: whether due process requires the posting of bond before seizure of assets where the opposing party's only legal interest in prejudgment sequestration is to ensure the continued availability of assets to enforce a possible favorable judgment, especially in a case where, as here, the moving party has a "heavy [clear and convincing] evidentiary burden", (Williams v. North Carolina, supra, 325 U.S. at 233-234)) at trial to collaterally attack a prior judgment of a sister state court. Cf., Result Shipping Co.

v. Ferruzzi Trading, 56 F.3d 394, 402-403 (2d Cir. 1995); Shauyman v. O'Neil, 987 F.2d 122, 128-129(2d Cir. 1993) (constitutional), Cobb v. Saturn Land Co., 966 F.2d 1334, 1337 (10th Cir. 1992) (constitutional) and Sassone v. Lapore, 629 A.2d 357, 362-63 (Conn. 1993) (Berdon and Katz, JJ. dissenting) (constitutional) with Reardon v. United States, 947 F.2d 1509, 1519 (1st Cir. 1991) (en banc) (unconstitutional) and Shawmut Bank of Rhode Island v. Costello, 643 A.2d 194, 201-02 (R.I.1994)(unconstitutional).

Finally, and specifically relevant to petitioner and the Arizona statutory scheme under attack in this case, the constitutionality of Ariz. Rev. Stat. § 25-315A was challenged on due process grounds in Stone v. Godbehere, 894 F.2d 1131 (9th Cir. 1990). Ariz. Rev. Stat. § 25-315A requires that "in all actions for dissolution of marriage or for legal separation, the clerk of the court shall pursuant to order of the superior court issue a preliminary injunction . . . the preliminary injunction shall be directed to each party to the action" and must be served with the initial summons and complaint in all cases.(Emphasis added)

On December 14, 1994, along with the ex parte temporary restraining order without notice issued on December 1, 1994 the petitioner was also served with the automatic mandatory and ministerial preliminary injunction issued by the clerk on November 4, 1994.(App.24-25) Under Ariz. Rev. Stat. § 25-315A(1)(a) the clerk of the superior court is required to automatically issue a standing mandatory preliminary injunction in all divorce cases on the mere filing of divorce complaint without prior notice and a bond. The standard form preliminary injunction is issued without *any* judicial supervision or involvement, enforceable by

contempt and prosecution for the crime of intereference with judicial proceeding which provides:

> (a) That both parties are enjoined from transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property except if related to the usual course of business, the necessities of life. . . .without the written consent of the parties or permission of the court. (App.24)

Ariz. Rev. Stat. § 25-315A(2) also provides that the preliminary injunction shall include the following statement:

> **WARNING**
>
> This is an official court order. If you disobey this order the court may find you in contempt. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings. . . .

(Emphasis added) (App.59)

In Stone, the plaintiff was incarcerated for violating the mandatory preliminary injunction issued under § 25-315A. The Ninth Circuit, in denying habeas corpus relief under 28 U.S.C. § 2254, held that § 25-315A did not violate due process under Sniadach, Fuentes and Mathews v. Eldridge:

> The Arizona statute is an automatic mandatory deprivation of property involved in a divorce proceeding. Stone claims that his property interests are inadequately protected without an immediate hearing to determine the "scope and necessity of the injunction". (citation omitted) But the statute does not restrict the property right only when an injunction is "necessary"; it restricts the property right in every case. Ariz. Rev. Stat. Ann. § 25-315A. Stone presents no evidence or allegation that

> there is any risk that the wrong parties will be named, or that an injunction could issue where no petition for divorce has been filed. Because the risk of erroneous deprivation of property is minimal or nonexistent, the existing procedure satisfies due process. 894 F.2d at 1131.

This provision of Ariz. Rev. Stat.§ 25-315 requiring the clerk of the superior court to issue a ministerial preliminary injunction simply upon the mere filing of the divorce complaint without *any* prior notice, without *any* judicial supervision, and without *any* opportunity for a hearing is unconstitutional under Fuentes v. Shevin, 407 U.S. 67, 73-74 (1972) (due process requires judicial supervision before court of clerk may issue prejudgment writ of attachment).

The panoramic record of these proceedings dramatically demonstrates that petitioner, presumptively divorced from respondent Chalker at the time of the filing of her action for dissolution of marriage, and his non-party adult children were indeed subject to "erroneous deprivation of property", which was neither "minimal" nor "nonexistent." The ex parte temporary restraining order issued by the chief judge of the divorce court supported solely by one-sided, self-serving, conclusory affidavits, and the mandatory preliminary injunction automatically issued by the clerk on the mere filing of the divorce complaint without affidavits,were both issued without *any* prior notice, without *any* opportunity for a prompt hearing, without *any* probable cause showing and without *any* bond requirement. This case provides the Court with another opportunity to consider the precise question left unresolved in Doehr, under "shocking" and "draconian" factual circumstances that vividly illustrate

the need for a final resolution of important and fundamental questions of constitutional law.

B. The Total Lack of Any Prior Notice of "Unilateral Hearings" and Other "Shocking" And "Draconian" Unconstitutional Procedural Defects Leading up to the Entry of a Coerced Default Judgment as a Discovery Contempt Sanction and the Loss of Direct Appeal

The divorce court's "shocking" and "egregious" departure from established constitutional norms and modes of procedure such as "unilateral hearings in [petitioner's] absence", which started with the issuance of the ex parte temporary restraining order without notice, the lack of service of process on the petitioner's adult children, the abrupt cancellation of the "emergency" hearing, the "draconian" default judgment as sanction for contempt, the numerous mailing and notice irregularities combined, including a "collusive" private "conference" off the record with the chief judge of the divorce court and respondent Chalker's divorce lawyer, a judge pro tempore of the divorce court since 1985, all culminating with petitioner's loss of his right to defend and appeal *in forma pauperis* under Boddie v. Connecticut, 401 U.S. 371, 374 (1971), run afoul of the Due Process Clause of the Fourteenth Amendment.

The right of access to the courts and the corresponding right to defend are core and fundamental rights firmly established in a long line of decisions of the Court. M.L.B v. S.L.J., 117 S.Ct. 555 (1996)(state may not block an indigent access to appeal afforded others by creating

barriers in action to terminate parental rights). See, Wolff v. McDonald, 418 U.S. 539, 579 (1974)(right of access to courts is "founded on Due Process Clause and assures that no person will be denied an opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights"); Ex parte Hull, 312 U.S. 546, 547-548(1941)(state may not abridge or impair access to the courts).

This Court has consistently held that due process requires "some form of hearing before an individual is finally deprived of a liberty or property interest" and that "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (citations omitted). As early as Magna Carta, process and procedure have been regarded as an important and valuable means for protecting the rights of litigants. In the United States, with the founders' desire to check arbitrary government, procedural safeguards were guaranteed to all persons by the inclusion of the due process clauses in the federal and state constitutions.

Few principles of law are as elemental and venerable as "a party is not to suffer . . . without an opportunity to be heard." Painter v. Liverpool Gas & Light Co., 11 English Rep. 478, 484 (K.B. 1836). "*Audi alteram partem* -- hear the other side," a demand made earnest through the centuries, is now a constitutional command spoken with the voice of the due process clause of the Fourteenth Amendment . . . " Caritativo v. California, 357 U.S. 549, 558 (1958).

Yet nothing contained in record of the Arizona divorce court proceedings remotely suggests any rudimentary

appreciation for these basic and venerable constitutional values.The aberrational and bizarre manner in which the Arizona divorce court conducted these proceedings exhibits an abuse of judicial power of the highest magnitude without the slightest regard or even apparent cognition or consideration given to the Supremacy and Due Process Clauses. All of the peculiar and wondrous constitutional notice and other "egregious" procedural irregularities reflected in the divorce court record "concerning the lack of notice of the Arizona divorce proceedings, calloused treatment, collusion, unilateral hearings, and draconian measures taken in [petitioner's] absence" are so "shocking" and "draconian" as to make a farce and mockery of the unconstitutional Arizona divorce proceedings. Wetmore v. Karrick, 205 U.S. 141, 149 (1907) (full faith and credit does not apply to judgment wanting in due process).

A court's aberrant "departure from established modes of procedure [can] render the judgment void," Windsor v. McVeigh, 93 U.S. 274, 282 (1876). This is particularly so when the procedural defects are of sufficient magnitude and "so unfair [as the state court record here amply demonstrates] as to deprive the . . . proceeding of its vitality." Eagles v. United States, 329 U.S. 304, 314 (1946). And, as here a default judgment improperly entered as a punishment or sanction for contempt is void for want of due process. Hovey v. Elliott, 167 U.S. 409, 415-417 (1896) (tracing the prohibition against the taking of property without notice and an opportunity to be heard to the Magna Carta and the common law of England); Societe International v. Rogers, 357 U.S. 197, 212 (1958) (severe sanctions may only be imposed for "willful" or "bad faith" violations of court orders); Baldwin v. Hale, 68 U.S. 223,

233 (1863) (parties whose rights are affected entitled to be heard and in order to be heard they must be notified); Hansberry v. Lee, 311 U.S. 32, 40 (1941) (person not named as party or not made party by service of process is not bound by a judgment in personam).[19]

And a judgment in which a party was denied a "full and fair opportunity" to assert claims and defenses violates due process and is therefore not entitled to judicial recognition under 28 U.S.C. § 1738 and the Full Faith and Credit Clause of Article IV § 1 of the United States Constitution. Kremer v. Chemical Construction Corp., 456 U.S. 461, 481-482 (1982) (court may not grant preclusive effect to a constitutionally infirm judgment and other state and federal courts are not required to accord full faith and credit to such a judgment); Marresse v. American. Academy of Ortho-pedic Surgeons, 470 U.S. 373, 380 (1985) (28 U.S.C. § 1738 requires federal courts to give same preclusive subject to due process requirements); Haring v. Prosise,462 U.S. 306, 311 (1983) (same); Migra v. Warren City School. Board. of Education, 465 U.S. 75, 83 n.5 (1985) (same); Allen v. McCurry, 449 U.S. 90, 95, 101 (1980) (full and opportunity to assert claims required before judgment entitled to preclusive effect). See also, Thourner v. Meyer, 803 F.2d 1093 (10th Cir. 1986) (no full and fair opportunity to be heard with one day notice and four day total life of state court action); Gray v. Lacke, 885 F.2d 399 (7th Cir.1989) (full and fair opportunity to be heard also includes an opportunity to file a direct appeal).

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[19]**The Seventh Circuit has characterized these line of Supreme Court cases combined as recognizing a" *fundamental and historical right to defend* rooted in the Due Process Clause". United States v. $40,877.59 in U.S. Currency, 32 F.3d 1151,1153(7th Cir.1994).**

In sum, given the "shocking" and "draconian" manner in which the Arizona divorce court conducted its proceedings, leading to the entry of default judgment without notice as a punishment for "contempt" and culminating in the loss of petitioner's right to perfect an appeal, the invalidity of the Arizona state court judgment cannot seriously be open to question. The record lucidly demonstrates the Arizona divorce court's unwarranted departure from established universal modes of procedure as to make a farce and mockery of the fundamental and established due process decisions of this Court by denying petitioner and his adult non-party children *any* semblance of an opportunity to be heard.

The Arizona divorce court's use of default judgment as a discovery sanction after finding petitioner in "contempt" for his "willful" failure to comply with a sua sponte order to attend a deposition which arrived at his Nashville residence of record by mail after the fact, resulting in the permanent transfer of more than $700,000 in sequestered assets belonging to him as well as his non-party adult children without prior notice violates due process as the discovery sanction imposed by respondent McDonald as punishment for contempt was grotesquely excessive and "draconian" in light of the divorce court's unsupported finding of willfulness and is fundamentally unfair as it is grossly disproportionate and unnecessary to vindicate any court's legitimate interest in punishing alleged recalcitrant discovery conduct and deterring its repetition. B.M.W. of North America v. Gore, 116 S.Ct. 1589, 1595-1599 (1996).See also, TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 456 (1993) (sanction enters zone of arbitrariness under the Due Process Clause when it

can be fairly categorized as "grossly excessive" in relationship to the State's legitimate interest in punishment and deterrence); International Union v. Bagwell, 114 S.Ct. 2552, 2557 (1994) (civil contempt sanctions or those penalties designed to compel future compliance with court order may only be imposed upon notice and opportunity to be heard).

The "shocking", "draconian" and "egregious" combined constitutional irregularities which occurred in the Arizona divorce court proceedings leading up to the coercive entry of a final default judgment without notice and the denial of petitioner's right to pursue a direct appeal, cannot be reconciled with clear and venerable rights established by the Court regarding constitutional notice requirements and the fundamental and historic right to defend rooted in the Due Process Clause which cannot be left to stand.[20] The Court has long held that departure from

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[20]**In light of the "Rooker-Feldman" and "Domestic Relations Exception" doctrines the petitioner and his non-party adult children have no apparent federal court remedy available to them to collaterally attack the Arizona divorce decree as review of the constitutional claims is only available in this Court under 28 U.S.C. § 1257. ARASCO v. Kadish, 490 U.S. 605,622(1989). In light of this limitation this Court has consistently demonstrated a heightened sensitivity to grant certiorari under 28 U.S.C. §1257 where state courts diverge from enforcing clearly established constitutional rights that lower federal courts have no judicial power to consider. See, Mincey v. Arizona, 437 U.S. 385, 402-04(1978) (Marshall, J. joined by Brennan J. concurring). Ordinarily "institutional restraints totally preclude any possibility that this Court can adequately oversee whether state courts have properly applied federal law. [citation omitted]. Because of these constraints[this Court] will be faced with a Hobson's choice in cases of less national significance that could have been formally left to the lower federal courts "to resolve. Id. at 404.**

constitutionally "established modes of procedure" will render a judgment void under the Due Process Clause. Windsor v. McVeigh, 205 U.S. 141, 149 (1907).

This Court has a long tradition of granting certiorari in appropriate cases where the decision below is shockingly wrong and presents substantial due process violations where as here, state courts have been unwillingly to address or ameliorate. See, e.g., Thompson v. City of Louisville, 362 U.S. 199 (1960); Garner v. Louisiana, 362 U.S. 157 (1961); NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) and Montana v. Kennedy, 366 U.S. 308, 309 (1961), cases where certiorari was granted in "view of the apparent harshness of the result entailed."

VI. CONCLUSION

For these reasons, this Court should issue a writ of certiorari to review the final judgment of the Arizona Court of Appeals, Second Division.

Respectfully submitted,

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February 22, 1997

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APPENDICES

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Appendix 1.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SHAWN D. CATZ, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	No. 3-95-0947
	)	JUDGE ECHOLS
SUSAN R. CHALKER, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM

Presently pending before the Court is Defendant Susan Chalker's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Lack of Personal Jurisdiction, to which Plaintiffs have responded in opposition. For the reasons outlined herein, Defendant's Motion to Dismiss is hereby GRANTED. Also pending are Plaintiffs' Motion for Preliminary Injunction and Plaintiffs' Motion Requesting Interpleader Fidelity to Deposit Bond in Registry of Court in Lieu of Cash Deposit. The Court held a hearing on Plaintiff's Motions for Preliminary Injunction and Interpleader action for over two days. The Court's decision on the Motions for Preliminary Injunction and Interpleader was reserved until its consideration of Defendant's Motion challenging the jurisdiction of the Court. All of these

motions were discussed in some fashion at the hearing. Plaintiff also has filed a Motion for Oral Argument on Defendant's Motion to Dismiss and Defendant has filed a Motion to Dismiss Plaintiff's Amended Complaint. By virtue of the Court's ruling on Defendant's Motion to Dismiss for lack of subject matter jurisdiction, these Motions are hereby DENIED as MOOT.

Plaintiffs, residents of Tennessee, filed this suit requesting that the Court issue a declaratory judgment pursuant to 28 U.S.C. §2201, that an Arizona state court judgment, entered on March 14, 1995, granting dissolution of the marriage of Plaintiff Robert Catz and Defendant Chalker is invalid the Full Faith and Credit Clause of Article IV, Section 1, and under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Plaintiffs also request that the Court permanently enjoin Defendant Fidelity Investments of the State of Massachusetts, Defendant Waterhouse Securities, and Defendant Teachers Insurance Annuity Association-College Retirement Equity Fund of the State of New York (collectively "Defendant Financial Institutions") from transferring accounts in their custody titled in the name of Plaintiffs. Plaintiffs further request that the Ohio state court judgment of April 10, 1989, granting dissolution of the marriage between Plaintiff Robert Catz and Defendant Chalker be given full faith and credit under Article IV, Section 1 of the United States Constitution.

Accepting all of Plaintiffs' factual allegations as true, as the Court must at this stage in the litigation, the factual basis for Plaintiffs' claims as stated in the Complaint is as follows: On April 13, 1980, Plaintiff Robert Catz and Defendant Chalker were married in Washington, D.C. On April 10, 1989, the marriage of Plaintiff Robert Catz and

Defendant Chalker was dissolved by a final decree entered by the Cuyahoga County Court of Common Pleas in Cleveland, Ohio ("Ohio Court").[1] Although Plaintiffs contend that the Ohio Court's decree is legally binding on Defendant Chalker, on November 4, 1994, Defendant Chalker filed a petition for dissolution of marriage in the Pima County Superior Court in Tucson, Arizona ("Arizona Court"), collaterally attacking the validity of the Ohio judgment. On December 1, 1994, the Arizona Court issued an ex parte temporary restraining order enjoining Defendant Financial Institutions from the payment, withdrawal, and/or disbursement of accounts in its custody and possession and titled in the name of the Plaintiffs. Thereafter, the Arizona Court entered a final decree and judgment on March 14, 1995, granting Defendant Chalker dissolution of marriage by default and invalidating the 1989 Ohio Court's judgment upon a finding by the Arizona Court that the judgment was not entitled to full faith and credit under Article IV, Section I, of the United States Constitution because the Ohio divorce was obtained by fraud. The Arizona decree further ordered that all accounts in the custody and possession of Defendant Financial Institutions and titled in the name of Plaintiffs be transferred to the sole ownership of Defendant Chalker.[2] According to the Complaint, the manner in which the Arizona state court opportunity to be heard.

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[1] The Ohio Court's decree purported to dissolve the marriage of Defendant Chalker and Plaintiff Robert Catz,awarding Plaintiff Robert Catz property located in the State of Ohio, and awarding Defendant Chalker property in her possession at the time of the decree. The Court declined to award alimony to either party.

[2] The decree of the Arizona Court also purported to dissol-

For instance, Plaintiffs Shawn and Jason Catz were never joined or named as parties in the Arizona state divorce action and did not receive notice of the proceedings in spite of the fact that each allegedly held an interest in some of the Tennessee investment accounts transferred to Defendant Chalker by the Arizona Court.[3] Furthermore, at the hearing held by this Court on October 26, 1995, Plaintiff Robert Catz testified that he did not receive adequate notice of the Arizona Court hearings that were held on February 6, 1995, March 2, 1995, and March 14, 1995, which resulted, among other things,[4] in the dissolution of his marriage and distribution of his assets.

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ve the marriage and distribute the marital property. However, unlike the Ohio Court, the Arizona Court awarded alimony to Defendant Chalker, and further awarded sole custody of the parties minor child, Aaaron Michael Catz, to Defendant Chalker.

[3]Plaintiffs Shawn and Jason Catz are the sons of Plaintiff Robert Catz from a previous marriage.

[4]After Defendant Chalker filed her divorce on November 4, 1994, an ex parte Temporary Restraining Order was issued by the Court against Plaintif seizing his assets until further order of the Court. Plaintiff filed an Emergency Motion to Dismiss on December 19, 1994, alleging that he had been divorced from Defendant Chalker in Ohio. On December 19, 1994, Plaintiff filed a notice of removal of the Arizona state case to the United States District Court in Arizona. He also filed an action in the District Court against Defendant Chalker and her attorneys under 42 U.S.C. 1983. On January 18, 1995, the District Court remanded the state divorce suit back to the Arizona state court. On January 27, 1995, Plaintiff mailed a notice of change of address to the state court, but it was

Defendant Chalker filed this Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) contending that the Court lacks subject matter jurisdiction and, further, that pursuant to Federal Rule of Civil Procedure 12(b)(2), the Court lacks personal jurisdiction over Defendant Chalker.

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returned to him. Afterwards, the Arziona state court held three hearings in Defendant Chalker's divorce case, On February 6, 1995, March 2, 1995, and March 14, 1995. Plaintiff was not present at any said hearings. Plaintiff alleges that he did not receive notice of any of them. Furthermore, he alleges that the state court hearing on March14, 1995, was improper because he filed a second notice of removal in the United States States District Court on March 13, 1995. On March 14, 1995, the District Court remanded the case back to the Arizona state court and ordered the Clerk not to accept further pleadings from Plaintiff without permission of the Court.As a result of the three state court hearings, the Arizona court found as follows: 1)Plaintiff was guilty of abusive and obstructive conduct,2) Plaintiff had violated the court's order to participate in discovery, 3)Plaintiff's Emergency Motion should be stricken,4)Plaintiff was not allowed to file an Answer, oppose his wife's claim or introduce evidence, 5)Defendant was entitled to default judgment against Plaintiff, 6)the Ohio divorce was null and void because it was obtained by Plaintiff through fraud,7)Plaintiff had secreted community marriage funds and assets,8)Defendant Chalker was awarded sole custody of the child of the parties with Plaintiff's visitation rights to be at Defendant Chalker's sole discretion, 9)Plaintiff was to pay Dedfendant Chalker $700 per month in child support and $1,000 per month in spousal maintenance, and 10) Defendant Chalker was awarded sole ownership of all investment, bank accounts and investment accounts of Plaintiff.

In their response, Plaintiffs contend that the Court has subject matter jurisdiction to consider their claims because: 1) there is complete diversity and the amount in controversy exceeds fifty thousand dollars; 2)the claims presented arise under the Due Process Clause of the United States Constitution, thereby granting the Court federal question jurisdiction;[5] 3)certain claims pertaining to the property settlement arise under Employees' Retirement Income Security Act, ("ERISA"), 29 U.S.C. §§ 1001-1461; and 4) certain claims arise under the Supplemental Jurisdiction Act, 28 U.S.C. § 1367(a).

All of Plaintiffs' claims arise out of the decrees of two state courts, one in Ohio and one in Arizona, each of which purported to grant a divorce to Plaintiff Robert Catz and Defendant Chalker and distribute their assets. The threshold issue to be decided by this Court is that of subject matter jurisdiction. At the outset, we note that federal courts traditionally have declined to exercise jurisdiction over domestic matters where jurisdiction is based on diversity even where the parties are diverse and the amount in controversy requirement has been met. Bennett v. Bennett, 1992 WL 3570026, No. 91-56177 at *1 (9th Cir. Dec. 3, 1992) (holding that divorce and related matters are

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[5]Plaintiffs' complaint includes allegations of constitutional violations under the Due Process Clause of the Fourteenth amendment and under the Full Faith and Credit Clause of Article IV. However, Plaintiffs have raised only the due process claim in support of the claim that the Court may exercise federal question jurisdiction in this case because"[t]he Supreme Court has held that. . . the full and faith and credit clause. . .[does not provide] a source of federal question jurisdiction." Evans v. Evans, 668 F.Supp.639, 644(M.D.Tenn.1987).

traditionally not within the subject matter jurisdiction of the federal judiciary); Firestone v. Cleveland Trust, 654 F.2d. 1212, 1215 (6th Cir. 1981) (same); Huynh Thi Anh v. Levi, 586 F.2d 625, 632 (6th Cir. 1978) (same); Karlson v. Karlson, 1993 WL 616447, No. CA93-0129113 at *1 (D.R.I. Dec. 15, 1993) (same); Evans v. Evans, 668 F.Supp. 639, 645 (M.D. Tenn. 1987) (same). The "subject of domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." In re Burns, 136 U.S. 586, 594 (1890). Furthermore, the so called "domestic relations exception" to federal subject matter jurisdiction applies to claims that involve federal questions where the dispute would deeply involve the court in domestic matters. Thompson v. Thompson, 798 F.2d 1547, 1558 (9th Cir. 1986), (citing cases) (stating that "[e]ven when a federal question is presented, federal courts decline to hear disputes which would deeply involve them in adjudicating domestic matters.") aff'd, 484 U.S. 174 (1988); Firestone, 654 F.2d. at 1215 (noting that "[e]ven when brought under the guise of a federal question action, a suit whose substance is domestic relations generally will not be entertained in federal court") (citing Denman v. Leedy, 479 F.2d 1097, 1098 (6th Cir. 1973)); Karlson, 1993 WL 616447 at *1 (noting that the domestic relations exception applies to cases arising under federal question jurisdiction).

The primary rationale for the domestic relations exception to subject matter jurisdiction stems from principles of comity and respect for state sovereignty. Huynh, 586 F.2d at 632 ("[S]trong policies of federal-state comity and deference to state expertise in the area are the theoretical underpinnings of federal courts' refusal to consider [domestic relations] cases."). As the United States Court of

Appeals for the Sixth Circuit has recognized, "[t]he field of domestic relations involves local problems peculiarly suited to state regulation and control, and peculiarly unsuited to control by federal courts." Firestone, 654 F.2d at 1215 (quoting Buechold v. Ortiz, 401 F.2d 371, 373 (9th Cir. 1968)). Furthermore, federal courts should decline to exercise jurisdiction over domestic matters in order "to prevent friction with states and avoid interfering in state proceedings particularly where the federal questions presented are closely intertwined with issues of strong local interest." Huynh, 586 F.2d at 633. In addition to respecting a state's interest in resolving its own domestic matters, federal courts refrain from considering such cases because of the strong state interest in adjudicating domestic matters, the relative expertise of state courts in the area of family law, the ability of state courts to provide ongoing supervision, the availability of professional support services, the undesirability of potentially incompatible federal and state decrees, the danger that parties involved in domestic disputes will play one court system off against another, and the congested federal dockets. Brown v. Hammonds, 747 F.2d 320, 322 (5th Cir. 1984)); (citing Crouch v. Crouch, 566 F.2d 486, 487 (5th Cir. 1978)); Firestone, 654 F.2d at 1215; Huynh, 586 F.2d at 632.

In the present case, the gravamen of Plaintiffs' claim is that they were denied due process during the Arizona Court's proceedings, which led to the divorce decree of March 14, 1995. Although Plaintiffs have characterized their claims as alleged constitutional violations, the relief sought is to void the Arizona state court decrees mentioned above, which, among other things, voided a prior Ohio divorce decree, granted a separate divorce, along with child custody, alimony and child support to Defendant Chalker,

and transferred his assets to her. Said relief directly implicates the aforementioned principles of comity. Plaintiffs request that the Court declare the dissolution decree entered by the Arizona Court invalid. Any such finding by this Court would necessarily involve the Court in the core of a domestic dispute between husband and wife seeking to obtain a declaration of their marital status, a declaration of rights or obligations arising from said marital status, and to enforce that declaration of status, rights, or obligations. This Court's adjudication of Plaintiffs claims will directly impact the marriage status and rights between the husband Plaintiff and his wife, namely Defendant Chalker and Plaintiff Robert Catz.[6] Bennett, 1992 WL

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[6]The facts of the present case are readily distinguishable from those in Ankenbrandt v. Richards, 504 U.S. 689(1992), where the Supreme Court held that the domestic relations exception doctrine to federal jurisdiction did not apply to a tort action based on diversity that was filed in federal district court. The plaintiff-wife in Ankerbrandt was not seeking a ruling on the validity of her divorce. Rather, the Plaintiff alleged that the defendant had committed torts against Plaintiff's children that in no way implicated their status as husband and wife. Id. at 706. Conversely, in the present case, Plaintiffs have not based their claims on actions that can be resolved without first determining the validity of the state divorce decrees. In fact, not only would the Court be required to review state court decisions,it is the status of Defendant Chalker and Plaintiff Robert Catz as husband and wife that is at the core of the present litigation.The present case is more readily comparable to Barber v. Barber,16 L.Ed.226 (1859) upon which the domestic relations exception was founded. See, Ankenbrandt, 504 U.S. at 693(discussing the

357026 at *1 (holding that the court had no subject matter jurisdiction where the Plaintiff alleged that his constitutional rights were violated in state divorce proceedings because at the core issue was the status of a wife and a husband). Traditionally, marriage, divorce, child custody, support payments and division of marital assets are uniquely state matters which involve distinct issues of state law.

The potential for impermissible interference in state domestic matters is particularly strong under the facts of this case because any ruling by the Court would necessarily affect the Arizona state court custody determination. Although the Ohio Court did not address custody matters, the Arizona Court awarded custody of the minor child, Aaron Catz, to Defendant Chalker. Federal courts should be particularly hesitant to interfere with state court custody decrees. For instance, in determining whether a state court has subject matter jurisdiction over a custody dispute, "a federal district court, in making its jurisdictional inquiry, would be required to review the state court's determination that it had subject-matter jurisdiction to issue the custody

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origin of the domestic relations exception to federal jurisdiction). In Barber, theplaintiff-wife sought to enforce a divorce decree awarded by a New York state court after her husband had fled the juroisdiction and filed divorce in a Wisconsin court alleging that the wife had abandoned him. Although the majority in Barber held that federal jurisdiction was proper, the dissent, which thought jurisdiction to be inappropriate, provided the basis for the current domestic relations exception. See,Anderbrandt, 504 U.S. at 700 (narrowing the domestic relatiuons exception but upholding the continuing validity of the exception as described by the dissent in Barber).

determination in question under its own laws. Such an intrusion into state court systems clearly is unwarranted absent affirmative congressional action sanctioning such an intrusion." Evans, 668 F. Supp. at 646 n. 16 (emphasis in original). The same sort of inquiry must be made in this case into the Arizona Court's actions and procedures in connection with its pleadings, notices, hearings and decrees.

Not only would the Court's exercise of jurisdiction over this case impermissibly interfere with the Arizona Court's judgment, it may result in incompatible federal and state decrees. Brown, 747 F.2d at 322 (noting the undesirability of "incompatible federal and state court decrees") (quoting Crouch, 556 F.2d at 487); Karlson, 1993 WL 616447 at *1 (same). If as Plaintiffs requestion, the Court declares the Arizona Court's judgment invalid, the Court's ruling would be in direct conflict with the Arizona Court's order relating to the parties' marital status, custody rights, support obligations, and division of property.

The fact that Plaintiffs have framed their Complaint in terms of constitutional violations does not alter the Court's conclusion that jurisdiction would be inappropriate. it is well established that principles of comity warrant dismissal even where a party alleges that a state court domestic proceeding violated his or her constitutional rights. Bennett, 1992 WL 357026 at *1 (holding no subject matter jurisdiction where the plaintiff claimed his constitutional rights were violated during state proceedings dissolving his marriage). For instance, in Edwards v. Goldberg, the Plaintiff alleged that he was not afforded due process notice and a hearing before the state court ordered that his disability and pension benefits be garnished to provide his former spouse child support payments. 1985 WL 12793, No. 847728 at *1 (6th Cir. Oct. 7, 1985), cert. denied, 475

U.S. 1123 (1986). In dismissing the claim, the Sixth Circuit stated that "it is clear that the federal courts generally lack jurisdiction to review domestic relations matters like this one which would require the federal courts to review Plaintiff's divorce decree, the status of his former wife and children, and the legality of the state process." Id. at *1 (citing cases).

Furthermore, the Court's conclusion is not altered by the fact that the alleged constitutional violation may have arisen from Chalker's alleged deceptive behavior. According to Plaintiffs, Defendant Chalker and her attorneys concealed the existence of the prior Ohio divorce decree from the Arizona Court.[7] However, in Brown v. Hammonds, 747 F.2d 320, the Fifth Circuit considered whether the federal court's decision to dismiss a suit for want of subject matter jurisdiction that arose from a domestic dispute was proper where the plaintiff alleged that the wife concealed from the court the existence of an antenuptial agreement. Id. at 322. Despite the allegations of misconduct on the part of the wife, the Court held that the Plaintiff's claims fell clearly within the domestic relations exception. Id. Similarly, an assertion that Defendant Chalker engaged in misconduct, even if that misconduct may have resulted in an incorrect ruling by the state court, does not alone confer jurisdiction on a federal district court.

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[7]The naked allegations by Plaintiff concerning the lack of notice of the Arizona state court proceedings, calloused treatment, collusion, unilateral hearings, and draconian measures taken in his absence are shocking. Apparently, Plaintiff has never had a hearing on the merits of his claims. He did not appeal the state court judgment, and his prior law suit in the United States District Court were dismissed.

In addition to the fact that the domestic relations exception and the accompanying comity principles warrant dismissal, it is clear that the Court does not have jurisdiction under the Rooker-Feldman doctrine. the Rooker-Feldman doctrine was developed form two Supreme Court cases, Rooker v. Fidelity Trust, Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). In each case, the Supreme Court considered whether a federal district court could exercise jurisdiction to determine the validity of a state court judgment. The Supreme Court held federal district courts "do not have jurisdiction ... over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in [the United States Supreme Court]." Feldman, 460 U.S. at 486 (citing 28 U.S.C. § 1257). As the Supreme court stated, "[t]he jurisdiction possessed by the District Courts is strictly original." Rooker, 263 U.S. at 415-416 ("If the constitutional questions stated in the will actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction."). See also Keene Corp. v. Cass, 908 F.2d 293, 296 (8th Cir. 1990) ("Federal courts with the exception of the United States Supreme Court, do not possess appellate jurisdiction over state court proceedings."); Claughton v. Donner, 771 F.Supp. 1200, 1204 (S.D. Fla. 1991) (citing cases) (holding "[A] federal district court may not review a state court judgment even upon a claim that the judgment violates the United States Constitution. The remedy for such a violation is an appeal to the state appellate courts, whose decision may be reviewed by the United States Supreme Court.").

It is clear that the Rooker-Feldman doctrine applies even where the plaintiff alleges that his or her constitutional rights have been violated. For instance, in Wijas v. Nelson, 1994 WL 117988, No. 92-3606 (7th Cir. April, 5, 1994), the United States Court of Appeals for the Seventh Circuit held that the Rooker-Feldman doctrine warranted dismissal where the Plaintiff alleged violations of constitutional rights under the First, Fourth, Fifth, Sixth, Eight, Ninth and Fourteenth Amendments and sought injunctive relief to enjoin sale of his home. Id. The Court held dismissal was warranted because the appropriate relief was appellate review in the state court system and then writ of certiorari to the United States Supreme Court. Id.; see also Ritter v. Ross, 922 F.2d 750, 754 (7th Cir. 1993) (holding that artificial attempts to redefine a claim as a due process violation were insufficient to cast jurisdiction upon the district court where the plaintiffs were really requesting appellate review of the state court's decision; Keene, 908 F.2d at 297 (holding that Rooker-Feldman doctrine applies where a litigant attempts to circumvent the requirement of seeking direct review in the United States Supreme Court "by casting her lawsuit as a section 1983 action") (citations omitted). Furthermore, the doctrine applies even where the alleged constitutional violations arose from deficiencies in the state court proceedings themselves. For instance, in Fariello v. Campbell, 860 F.Supp. 54 (E.D.N.Y. 1994), the United States District Court for the Eastern District Court of New York considered whether a federal court could exercise jurisdiction over a plaintiff's claims that the state family court violated the Plaintiff's constitutional rights during a contempt proceeding. Among his various allegations of constitutional violations committed by the family court, the plaintiff contended that he was denied an

appeal by being immediately brought before the judge without an opportunity to respond and review the findings that held him in contempt. Id. at 65. In holding that the district court had no jurisdiction to consider the plaintiff's claims, the Court reasoned that "[a]ny constitutional error committed by the Family Court in [the plaintiff's] contempt proceeding, whether in the interpretation of statutes or procedurally, is a matter for the state appellate courts to review, or the United States Supreme court if it grants certiorari." Id. at 67; see also Bennett, 1992 WL 357026 at *1 (holding that the federal court had no subject matter jurisdiction where the plaintiff alleged that his constitutional rights were violated in state divorce proceedings).

In order for the Rooker-Feldman doctrine to apply to a claim presented in federal district court, the issue before the Court must be "'inextricably intertwined' with the claim asserted in a state court proceeding." Keene, 908 F.2d at 296 (quoting Feldman, at 482 n. 16)). A claim is inextricably intertwined with a state court judgment "only to the extent that the state court wrongly decided the issues before it. Where federal relief can be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment." Wijas, 1994 WL 117988, at *2 (quoting Keene, 908 F.2d at 296-97). See also Fariello, 860 F.Supp. at 65 ("If ... the ...suit challenges the decision of the state court on the grounds that the state court's interpretation of a statute was unconstitutional, or that the state court committed a constitutional error in arriving at its decision, the federal court does not have subject matter jurisdiction to hear the case.") (citing cases). Thus, if the plaintiff is requesting that the Court determine that a state court's judgment or

decree was incorrect, the Rooker-Feldman doctrine is implicated.

Once it has been determined that the relief requested requires a federal district court to determine whether a state court's ruling was incorrect, the Court must next determine whether the Plaintiff's claim constitutes a general or specific grievance. In particular, a district court has jurisdiction to hear general challenges to state procedures and laws. However, they do not have jurisdiction over challenges arising out of particular cases even where those challenges allege that the state court's action was unconstitutional. Feldman, 460 U.S. at 486. As explained by the court in Fariello:

> [T]he Rooker-Feldman doctrine has come to mean that, if the [suit] challenges a rule or statute relied upon by the state court on the grounds that the rule or statute is itself unconstitutional, the federal court has the subject matter jurisdiction to hear the case. ... If, however, the [suit] challenges the decision of the state court on the grounds that the state court's interpretation of a statute was unconstitutional, or that the state court committed a constitutional error in arriving at its decision, then the federal court does not have jurisdiction to hear the case.

Fariello, 860 F.Supp. at 66 (citing cases).

Plaintiffs' claim clearly requests this Court to make a determination that the ruling by the Arizona Court was incorrect. The Arizona Court found that the Ohio Court divorce decree was not entitled to full faith and credit. Plaintiffs have requested that this Court declare that the

Ohio decree is entitled to full faith and credit, a ruling which necessitates a finding that the Arizona Court's ruling was incorrect. Plaintiffs further request that the Court find that the Arizona Court violated their rights under the Due Process Clause of the Fourteenth Amendment by failing to give Plaintiffs adequate notice of state court proceedings and failing to join Plaintiffs Shawn and Jason Catz in those proceedings. Again, the gravamen of Plaintiffs' claim is that the Arizona Court ruling was erroneous because of the procedural mistakes allegedly committed by that court.

Finally, the Plaintiffs request that Defendant Financial Institutions be enjoined from transferring any property titled in the name of Plaintiffs. The granting of such a request would clearly require a finding by this Court that the Arizona Court's decree as it pertains to the distribution of the marital assets was incorrect. Accordingly, it is clear that Plaintiffs' claims implicate the Rooker-Feldman doctrine.

Not only is it clear that Plaintiffs seek a determination by this Court that the Arizona Court's ruling is erroneous, the grounds upon which they base this claim constitute a specific grievance over which this Court cannot exercise its jurisdiction. Plaintiffs have not alleged a general constitutional violation over which this Court may exercise its jurisdiction. Plaintiffs have not alleged that the state law notice requirements are unconstitutional. Nor have Plaintiffs alleged that the rules governing joinder of third parties to divorce proceedings are unconstitutional. Rather, Plaintiffs' principal grievance is that the Arizona state court failed to follow proper procedural and legal requirements and by doing so, it denied him a fair hearing and violated their constitutional rights to due process. As such,

Plaintiffs' claim constitutes a specific grievance which this Court is precluded from reviewing.[8]

In addition to requesting that the divorce decree be declared null and void, Plaintiffs request the Court to enjoin Defendant Financial Institutions from transferring property in accordance with the Arizona Court's decree. Of course, if the Court is unable to review the Arizona Court's marital dissolution decree, then the Court cannot enjoin Defendant Financial Institutions' action on the basis of its invalidation of the divorce decree. Moreover, injunctive relief involving property matters would impermissibly interfere with state court proceedings and would create the friction between state and federal bodies. As noted by the Sixth Circuit, "traditional notions of comity ... [require] that, as between state and federal courts, jurisdiction must be yielded to the Court that first acquires jurisdiction over the

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[8]Furthermore, although the violations alleged by Plaintiffs are egregious, this does not change the conclusion that this Court cannot consider the claims. In Feldman, the Supreme Court held that federal district was clearly without jurisdiction to consider claims even though the Plaintiffs alleged that the state court had "acted arbitrarily and capriciously". Feldman, 460 U.,S. at 486. Thus, although plaintiffs may feel deeply wronged by the alleged unconstitutional actions of the Arizona Court, the proper relief for their claims is appellate review in the state court system and then writ of certiorari to the United States Supreme Court.

property ... not only where property is judicially seized, but in all cases where 'to give effect to it jurisdiction, the court must control the property.'" In re Washington, 623 F.2d 1169, 1172 (6th Cir. 1980), cert. denied, 449 U.S. 1101 (1981).

Plaintiffs further claim that the Court may properly exercise jurisdiction under ERISA. However, it is clear that the principles of comity under the domestic relations exception as discussed above apply even where the issues are framed in terms of an ERISA violation. See Reyer v. Trust Annuity Plan for Pilots of Trans World Airlines, Inc., 891 F.Supp. 591, 593 (M.D. Fla. 1995) (holding district court did not have subject matter jurisdiction to consider a claim where a party requests a determination of his rights under an ERISA plan following a state court divorce proceeding); Eichelberger v. Eichelberger, 584 F.Supp. 899, 901 (S.D. Tex. 1984) (same). Although Section 1056 of ERISA grants the federal court concurrent jurisdiction with the state courts, Clark v. Superior Court of District of Columbia, 702 F.Supp. 4, 8 (D.D.C. 1988), in order to declare who is entitled to benefits under an ERISA plan, the Court would be required "to involve itself unnecessarily in this state court divorce proceeding, which is comprehensively and exclusively regulated by [state] laws. ... [T]he exercise of jurisdiction by the Court would constitute an unwarranted intrusion into state affairs." Eichelberger, 584 F.Supp. at 901.

Finally, the Court does not have jurisdiction to consider any supplemental state law claims asserted by Plaintiffs. As noted above, the Court lacks subject matter jurisdiction to consider Plaintiffs' claims based on the domestic relations exception and the accompanying principles of comity, and based on the Rooker-Feldman doctrine. As all of Plaintiffs'

federal claims have been dismissed, the Court declines to exercise supplemental jurisdiction over any remaining state law claims. See 28 U.S.C. § 1367 (c) (3). Accordingly, Defendant's Motion to Dismiss is hereby GRANTED in its entirety.

Both parties have also addressed the issue of whether the Court has personal jurisdiction over Defendant Chalker. However, since the Court determined it does not have subject matter jurisdiction to consider Plaintiffs' claims, it is unnecessary to determine whether the Court may exercise personal jurisdiction over Defendant Chalker.

For the foregoing reasons, Defendant's Motion to Dismiss is GRANTED, and this cased is hereby DISMISSED. In light of the Court's ruling on Defendant's Motion to Dismiss, all remaining Motions are hereby DENIED as MOOT.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

Appendix 2

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

ROBERT S. CATZ, Plaintiff) CASE NUMBER: D 191073
)
) JUDGE STANLEY M. FISHER
VS.)
)
SUSAN R. CATZ,) JUDGMENT ENTRY
Defendant)

This case came on for Trial on April 18, 1989 before the Honorable Stanley M. Fisher. The hearing was conducted upon the Complaint for Divorce of the Plaintiff, the Defendant being in default of answer. Both parties were duly served with process according to law. Plaintiff presented evidence, corroborated by a witness, relative to the averments contained in his Complaint for Divorce.

Upon due consideration of the Complaint for Divorce and the evidence presented at the time of the Trial, this Honorable Court finds that: Plaintiff was a resident of Cuyahoga County, Ohio, for a continuous period in excess of six (6) months immediately preceding the filing of his Complaint for Divorce; the parties were married as alleged in Washington, D.C., on April 13, 1980; and, one (1) child was born as issue of this marriage, namely Aaron Catz, age eight (8).

This Honorable Court further finds that Plaintiff and Defendant have lived separate and apart without cohabitation for a period of time in excess of one (1) year, thereby entitling Plaintiff to an absolute divorce.

This Honorable Court further finds that: the parties did not own real property in the State of Ohio which constitutes martial assets; the parties have not established any joint residence in the State of Ohio; the parties have not intermingled personal, tangible and/or intangible property since the time of their marriage; Plaintiff has taken possession of only his personal property located in the State of Ohio, which consists of clothing, toiletries, books, files and other supplies that are inherent in the practice of his profession; and, Defendant has in her possession her personal property.

This Honorable Court further finds that: according to Ohio Revised Code Section 3109.23, the Court does not have jurisdiction to determine custody and visitation rights regarding the child of this marriage because the child has no significant connection with the State of Ohio and has been residing with his mother in the State of Florida; this Court is not the proper forum to determine matters of child support because the appearance of the defaulting Defendant is necessary to the just adjudication of the issue; and, the forum state exercising jurisdiction over the child of this marriage should apply its own substantive law related to support.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff is hereby granted a divorce from Defendant and the marriage contract heretofore existing between the parties is hereby dissolved and set aside;

2. Neither party is entitled to alimony;

3. Plaintiff shall retain possession of and have sole and exclusive rights to his personal property located in the State of Ohio;

4. Defendant shall retain possession of and have sole and exclusive rights to her personal property which is presently in her possession; and,

5. Plaintiff shall pay the costs of this proceeding for which judgment is rendered and execution may issue.

JUDGE STANLEY M. FISHER

Appendix 3.

ARIZONA SUPERIOR COURT, PIMA COUNTY

Petitioner	)	
SUSAN RUTH CHALKER	)	NO. D-103065
	)	
	)	PRELIMINARY INJUNCTION
Respondent	)	AGAINST BOTH
ROBERT STEVEN CATZ	)	
		PETITIONER AND RESPONDENT

WARNING. THIS IS AN OFFICIAL COURT ORDER. IF YOU DISOBEY THIS ORDER THE COURT MAY FIND YOU IN CONTEMPT OF COURT. YOU MAY ALSO BE ARRESTED AND PROSECUTED FOR THE CRIME OF INTERFERING WITH JUDICIAL PROCEEDINGS AND ANY OTHER CRIME YOU MAY HAVE COMMITTED IN DISOBEYING THIS ORDER.

YOU OR YOUR SPOUSE MAY FILE A CERTIFIED COPY OF THIS ORDER WITH THE PIMA COUNTY SHERIFF. A CERTIFIED COPY MAY BE OBTAINED FROM THE CLERK OF THE COURT THAT ISSUED THIS ORDER. IF YOU ARE THE PERSON THAT BROUGHT THIS ACTION, YOU MUST ALSO FILE EVIDENCE WITH THE SHERIFF THAT THIS ORDER WAS SERVED ON YOUR SPOUSE.

THIS COURT ORDER IS EFFECTIVE UNTIL A FINAL DECREE OF DISSOLUTION OR LEGAL SEPARATION IS FILED OR THE ACTION IS DISMISSED.

IT IS ORDERED that during the pendency of this action YOU, PETITIONER AND RESPONDENT NAMED ABOVE, as parties to this action, are enjoined from and shall not:

(a) Transfer, encumber, conceal, sell or otherwise dispose of any of the joint, common or community property of the parties, except in the usual course of business or for necessities of life, without the written consent of both parties or permission of the court;

(b) Molest, harass, disturb the peace of, or commit an assault or battery on the person of your spouse (petitioner or respondent) or any natural or adopted child of the both parties, and

(c) Remove from the State of Arizona any natural or adopted child of the parties presently residing in the State of Arizona without prior written consent of both parties or permission of the court.

IT IS FURTHER ORDERED that this injunction is effective against both parties to this action. If you are the petitioner, the injunction is effective upon filing the petition for dissolution or legal separation. If you are the respondent, this injunction is effective upon being served with, or accepting service of, a copy of this injunction upon you.

IT IS FURTHER ORDERED that this injunction has the same force and effect of an order of the Superior Court signed by a judge and is enforceable by all remedies made available by law, including contempt of court.

Issued by my hand and seal of this court this day of **November 4, 1994**.

Annette Everlove
BUTLER & STEIN, P.C.
110 S. Church, Ste. 9300
Tucson, AZ 85701
(602) 628-1618
Computer No.: 17238

JAMES N. CORBETT
Clerk of the Court

By: **Larry Richards**
Deputy Clerk

Appendix 4

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 85701
(602) 628-1618
Pima County Computer No. 17238

and

Leonard I. Karp, Esq.
KARP & WEISS, P.C.
33 N. Stone Avenue
Suite 1800
Tucson, Arizona 85701-1415
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:	)	
	)	
SUSAN RUTH CHALKER,	)	NO. D-103065
	)	
Petitioner	)	TEMPORARY RESTRAINING ORDER WITHOUT NOTICE
and	)	
	)	
ROBERT STEVEN CATZ, et al.	)	
	)	
Respondent.	)	
	)	

It clearly appearing from the specific facts shown by Petitioner's verified Amended Petition for Dissolution and the affidavits submitted in support of Petitioner's Application for Temporary Restraining Order on file in this proceeding that immediate and irreparable injury will result to the moving party if no order is issued before the time for responding has elapsed and before the adverse party or his attorneys can be heard in opposition. One of the applicant's attorney having certified to the Court in writing the reasons supporting the claim that notice should not be required and it appearing to the Court that the injury defined is irreparable because absent a temporary restraining order

prohibiting the payment, withdrawal or disbursement of funds, stocks or other property from **ANY ACCOUNTS IN THE NAME OF RESPONDENT AND/OR PETITIONER AND/OR RESPONDENT'S CHILDREN OR IN WHICH RESPONDENT HAS AN INTEREST, NO MATTER HOW DENOMINATED AND WHEREVER LOCATED**, Respondent will remove assets belonging to the community or in which the community has an interest from the Court's jurisdiction, or take other action violative of A.R.A. § 25-315.

IT IS THEREFORE ORDERED that **RESPONDENT** is enjoined and prohibited from payment, withdrawal and/or disbursement, in any manner whatsoever, of any funds, stocks, bonds, notes or other property, however it may be denominated and where, which may be in his possession and/or control and titled in the names of **ROBERT STEVEN CATZ,** DOB: 03/07/44, SSN: 560-58-1390; **SUSAN RUTH CHALKER**, DOB: 04/30/42, SSN: 071-34-6540; and/or Respondent's children, **SHAWN DAVID CATZ** (DOB: 12/28/68, SSN: 591-01-3116); and/or **JASON ALAN CATZ** (DOB: 07/04/73), SSN: 591-01-2528); and/or **AARON MICHAEL CATZ** (DOB: 10/15/80, SSN: 593-62-0570); or in which Respondent has an interest whatsoever, no mater how denominated and wherever located.

IT IS FURTHER ORDERED that this Order be filed forthwith in the office of the Clerk of the Superior Court and entered of record and that the moving party serve a copy of this Temporary Restraining Order, the First Amended Petition for Dissolution of Marriage, the Ex Parte Motion to Add Parties and for Issuance of Temporary Restraining Order Without Notice, and the supporting affidavits forthwith upon any party to whom this order is

directed and upon any other party or attorney who has appeared in this action in accordance with Rule 5, Arizona Rules of Civil Procedure.

This Order shall issue without bond and shall continue in force and effect until further order of the Court.

DATED this lst day of December, 1994.

/S/ Michael Alfred
Judge
Pima County Superior Court

Appendix 5.

Filed 12/14/94

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

In Re Marriage of	)	
SUSAN RUTH CHALKER,	)	
Petitioner,	)	No. D-103065
VS.	)	
ROBERT S. CATZ,	)	
Respondent.	)	
	)	

RESPONDENT'S EMERGENCY MOTION TO DISMISS PETITION FOR DISSOLUTION OF MARRIAGE

Respondent Robert S. Catz, pro se hereby moves to dismiss this case for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Arizona Rules of Civil Procedure. In support of this motion, respondent avers:

1. The parties were married in Washington, D.C. on April 12, 1980.

2. The parties were divorced on April 10, 1989, by decree of the Cuyahoga County Court of Common Pleas, Cleveland, Ohio, upon the following findings: (1) there was proper service on defendant Susan R. Catz, (*aka* Susan R. Chalker); (2) neither party was to be awarded alimony; (3) Robert s. Catz was entitled to keep all of his real and personal property located in the State of Ohio; (4) Susan R. Catz was entitled to keep all personal property in her possession in the State of Florida; and, (5) since the child the issue of the marriage had no significant contacts with the State of Ohio, the Court could not issue any order

relating to child custody and child support. A true and correct cop of the decree of divorce is attached as "Exhibit A."

3. The parties have not remarried.

4. The decree of divorce granted Robert S. Catz on April 10, 1989, by the Cuyahoga County Court of Common Pleas, Cleveland, Ohio, shall be given full faith and credit by this Honorable Court pursuant to Article IV, Section 1, United States Constitution and 28 U.S.C. § 1738.

5. The instant action is barred by laches, waiver, and estoppel, as petitioner Susan Chalker waited more than five and one-half years after entry of the Ohio decree of divorce before bringing her action for separate maintenance and division of property.

6. Petitioner and petitioner's counsel have failed to disclose to this Honorable Court the existence of a prior state court judgment granting the undersigned respondent a divorce and dissolution of all issues regarding alimony and equitable separation of property.

7. In that this court has issued an ex parte Order upon petitioner's motion seizing all of respondent's assets, respondent will be irreparably harmed if the instant emergency motion is not granted, in that: (1) businesses that he operates will have to cease operations immediately and will be shut down; (2) vendors and other creditors will not be paid, and will refuse to do business with respondent; (3) respondent will be able to pay his apartment rent and other personal obligations (4) respondent will not be able to pay child support, which he voluntarily pays without court order in the amount of $825.00 each and every month (a fact which was not disclosed by petitioner and petitioner's counsel in their moving papers to this Court).

WHEREFORE, respondent respectfully requests that this Honorable Court dismiss the Susan Ruth Chalker's Petition for Dissolution of Marriage.

Respectfully submitted,

Robert S. Catz

Respondent, Pro Se

Appendix 6.

Filed 12/14/94

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

In Re Marriage of	)	
SUSAN RUTH CHALKER,	)	
Petitioner,	)	No. D-103065
VS.	)	
ROBERT S. CATZ,	)	
Respondent.	)	
	)	

ORDER

AND NOW, this 14 day of December, 1994, upon respondent's filing of a Emergency Motion to Dismiss Petition for Dissolution of Marriage, and upon good cause being shown, this Court sets this matter for an emergency hearing in Courtroom **TBA**, Pima County Superior Court, on December 19, 1994, at 8:30 o'clock a.m.

/s/Joseph R. McDonald

BY THE COURT:

12-14-94

Appendix 7.

Filed Feb 6, 1995

ARIZONA SUPERIOR COURT, PIMA COUNTY

JAMES CORBETT, Clerk

M. Drum Deputy

Judge: HON. JOSEPH R. McDONALD CASE NO. D-103065

Pro Tempore

Court Reporter: Dierdre Muzall DATE 6 February 1995

IN RE THE MARRIAGE OF

SUSAN RUTH CHALKER, Petitioner

ROBERT STEVEN CATZ

Respondent.

EVENT SUMMARY

Type: Mot/Continue OSC Result: Granted/Cont
Date: 14Mar95 Time: 9:00 am Length: 1 day Div: A Req: Type: OSC
Result: Vacate
Date: 16Feb95 Time: 9:00 am Length: 1 day Div: A Req:
Type: Result:
Date: Time: Length: Div: Req:
Type: Result:
Date: Time: Length: Div: Req:

MINUTE ENTRY

HEARING ON PETITIONER'S MOTION TO CONTINUE ORDER TO SHOW CAUSE (PRE DECREE)

Petitioner present, Respondent not present.

Ms. Everlove makes statements to the Court RE continuance of the Order to Show Cause hearing, citing remand from Federal court.Petitioner, Petitioner's supervisor, and a witness having to be out of town for business on 16 February 1995, and requests a continuance to early March.

Ms. Everlove further advises the Court of Petitioner's difficulty in obtaining a solitary address for Respondent, his

refusal to honor discovery requests, her belief that Respondent is hiding assets, and requests sanctions if Respondent does not appear and comply with the subpoena for his disposition, duces tecum, and further requests Petitioner be allowed to endorse and negotiate an insurance check which is reimbursement for Petitioner's vehicle, recently involved in an accident.

IT IS ORDERED Petitioner's Motion for Continuance of the Order to Show Cause is GRANTED.

IT IS FURTHER ORDERED CONTINUING the hearing to 14 March 1995 at 9:00 a.m. for one (1) day and VACATING the hearing currently set for 16 February 1995.

IT IS FURTHER ORDERED Respondent, Robert Steven Catz, shall provide opposing counsel and the Court with a single address where he will henceforth receive all process, pleadings, notices, and the like. Said address shall remain as his service address until changed by order of this Court.

IT IS FURTHER ORDERED Respondent, Robert Steven Catz, will participate in discovery in accordance with the rules of this Court, specifically, he shall appear for and participate in his deposition currently scheduled for 9 February 1995. In the event he fails to do so, Mr. Catz is admonished that he will be subject to sanctions, which may include striking his response and other pleadings in this matter.

IT IS FURTHER ORDERED Petitioner's request for permission to endorse the reimbursement check from GEICO Insurance is DENIED for the reason that the Court is not in a position to grant such a request.

The Court signs this minute entry in lieu of a formal order.

FILED IN COURT: Petitioner's Notice of Filing.

Hon. Joseph R. McDonald

M. Drum
Deputy Clerk

cc: Hon. Joseph R. McDonald
Annette Everlove (Butler & Stein)
Leonard I. Karp (Karp & Stolkin)
Robert S. Catz, 1402 17th Ave #B, Nashville, TN, []

Appendix 8.

ARIZONA SUPERIOR COURT, PIMA COUNTY

10 March 1995
JAMES CORBETT, Clerk
M. Druan Deputy

[Judge] Pro Tempore JOSEPH R. McDONALD CASE NO. D-103065

[Court] Reporter: None DATE March 2, 1995

[IN RE] THE MARRIAGE OF

[SUSAN] RUTH CHALKER
Petitioner,

[and]

[ROBERT] STEVEN CATZ, ( )
Respondent

EVENT SUMMARY

Type: Under Advisement Ruling		Result:		
Date:	Time:	Length:	Div:	Req:
Type:			Result:	
Date:	Time:	Length:	Div:	Req:
Type:			Result:	
Date:	Time:	Length:	Div:	Req:
Type:			Result:	
Date:	Time:	Length:	Div:	Req:

MINUTE ENTRY

UNDER ADVISEMENT RULING
RE: PETITIONER'S MOTION FOR SANCTIONS

The Court has heard the arguments of counsel for petitioner, respondent not appearing in person or by counsel, and finds as follows:

1. Respondent was served with the summons, amended petition for dissolution and various other documents described in the return of service on December 14, 1994 in Tucson, Pima County, Arizona. The documents with

which respondent was then served included uniform interrogatories and a request for production of documents.

2. On the same date, December 14, 1994, respondent filed his emergency motion to dismiss the amended petition. Petitioner has filed her written opposition to this emergency motion. The emergency motion had as respondent's address the same address where he was served earlier in the day.

3. On December 19, 1994, respondent filed a petition and notice of removal of this dissolution proceeding to the United States District Court for the District of Arizona at Tucson. The basis alleged by respondent in the petition for removal was that the dissolution petition file din this court represented an attack on the constitutional validity of an Ohio decree of divorce entered April 10, 1989. The matter was remanded to this court by the U.S. District Court, Marquez, J.

4. On December 22, 1994, respondent was noticed for deposition on January 3, 1995. Because of the removal and subsequent remand, the deposition was reset for February 9, 1995, and the notice was issued January 24, 1995.

5. Since December 14, 1994, respondent has apparently moved from Tucson and has failed to provide the court or opposing counsel with a current address as he is required to do under Rule 12(a), Uniform Rules of Practice for the Superior Court. As a consequence, counsel for petitioner has been required to send copies of pleadings to respondent at five different addresses.

6. On February 6, 1995, by minute entry order, respondent was directed to provide opposing counsel and the court with a single address where he will henceforth receive all process, pleadings and notices. Respondent has failed to do so.

7. In the same minute entry order, respondent was directed to appear for his deposition on February 9, 1995. Again, respondent has failed to comply.

8. Respondent has not answered uniform interrogatories served upon him on December 14, 1995, nor has he produced the documents set forth in the request for production similarly served upon him on the same date.

9. Respondent has failed to participate in discovery as required by the Arizona Rules of Civil Procedure and that failure is willful, deliberate and in bad faith. Respondent is subject to sanctions as set forth and permitted in Rules 16(f), 26(f) and 37(b), Arizona Rules of Civil Procedure.

10. Petitioner is entitled to an award of all fees and costs associated with respondent's failure to comply with discovery requests.

THEREFORE, IT IS ORDERED:

1. Respondent is in contempt of the Court's orders regarding discovery.

2. Respondent is subject to sanctions and will be sanctioned in accordance with Rules 16(f), 26(f) and 37(b), Arizona Rules of Civil Procedure.

3. Petitioner is awarded her fees and costs associated with respondent's failure to comply with discovery. Ms. Everlove will submit the appropriate affidavit.

4. As a sanction, the default of respondent, Robert Steven Catz, is herewith entered. The hearing currently set on petitioner's OSC on March 14, 1995 shall be limited to entry of a default judgment pursuant to Rule 55(b), Arizona Rules of Civil Procedure.

The Court signs this minute entry in lieu of a formal order.

_____

Joseph R. McDonald

Judge Pro Tempore

Copies to: Hon. Joseph R. McDonald
Annette Everlove, Esq.
Leonard Karp, Esq.
Robert S. Catz, c/o Shawn D. Catz, 1402 17th Ave #B, Nashville, TN 37212
Under Advisement Clerk
Court Administrator

Beth Hoover/lf
Deputy Clerk

Appendix 9.

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 86701
(602) 628-1618
Pima County Computer No. 17238

and

Leonard Karp, Esq.
KARP & WEISS, P.C.
33 N. Stone Ave.
Suite 1800
Tucson, Arizona 85701
(602) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:

SUSAN RUTH CHALKER, No. D-103065

Petitioner,

and

ROBERT STEVEN CATZ, Assigned to Judge McDonald

Respondent,
Additional Parties.

DECREE OF DISSOLUTION OF MARRIAGE

This matter coming on regularly to be heard before the Court on March 14, 1995, and Petitioner being present in person and through her attorneys, Annette Everlove and Leonard Karp; the Respondent not appearing; this Court having acquired jurisdiction over the Respondent on December 14, 1994 by personal service upon him of the Amended Petition for Dissolution, Summons, Preliminary Injunction, and other pleadings, all as set forth in that certain Affidavit of Return of Service dated December 15, 1994; Respondent not having responded to Petitioner's Request for Production of Documents served upon him on December 14, 1994; Respondent not having answered Uniform Domestic Relations Interrogatories served upon him on December 14, 1994; Respondent failing to attend his deposition duces tecum scheduled for February 9, 1995; Respondent failing to obey this Court's Minute Entry Order dated February 6, 1995, and having been found in contempt of Court, all as set forth in this Court's Minute Entry Order dated March 2, 1995, and default against Respondent having been entered and evidence having been presented and considered, the Court finds as follows:

1. Petitioner and Respondent were domiciled in the State of Arizona for at least ninety days prior to the filing of the Petition for Dissolution of Marriage.

1. Petitioner and Respondent were domiciled in the State of Arizona for at least ninety days prior to the filing of the Petition for Dissolution of Marriage.

2. Any judgment on the divorce purportedly heretofore obtained by Respondent against Petitioner in the State of Ohio, County of Cuyahoga, is null and void having been fraudulently obtained and further this Court shall not give full faith and credit to said judgment.

3. The conciliation provisions of A.R.S. § 25-381, as amended, either do not apply or have been met.

4. The marriage of the parties is irretrievably broken with no reasonable prospect of reconciliation.

5. There is one minor child the issue of this marriage, to wit: Aaron Michael Catz, date of birth October 15, 1980

6. To the extent it has jurisdiction to do so, this Court has considered, approved and made provision for the custody and support of the parties' minor child, maintenance and support of the parties, division of community and other joint or common debts, obligations and property of the parties.

7. Petitioner shall have sole legal and physical custody of the parties' minor child with such visitation in Respondent as Petitioner, in her sole discretion, deems appropriate.

8. Respondent has been employed as a professor of law from 1979 until approximately 1993, first at Cleveland Marshall School of Law and later at District of Columbia School of Law, and the Court attributes income to him based upon income earning ability of $73,000.00 per annum.

9. Petitioner shall be entitled to an award of child support pursuant to Arizona Child Support Guidelines as set forth in the Child Support Order and Order of Assignment

submitted herewith and signed by the Court this date. Said child support award shall be effective January 1, 1995 with no offset in Respondent for any sums paid to date.

10. Petitioner satisfies the statutory requirements of A.R.S. § 25-319(A) and is in need of, and entitled to, an award of spousal maintenance, in that Petitioner lacks sufficient property, including property awarded herein, to provide for her reasonable needs and has, at Respondent's urging, become a contract elementary school teacher with no tenure, nor tenure possibility with her present employer.

11. During the pendency of these proceedings, Petitioner sustained an insurable loss on her automobile in the sum of $4,800.00 which Respondent's conduct has precluded Petitioner from collecting.

12. Respondent has secreted, dissipated and/or otherwise failed to account for substantial community funds and assets.

13. The terms of this Decree are fair and equitable given the Court's finding of Respondent's dissipation, secreting and/or failure to account for marital assets.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The marriage previously existing between the parties is dissolved.

2. Petitioner shall have sole legal and physical custody of the parties' minor child, Aaron Michael Catz, with such visitation in Respondent as Petitioner, in her sole discretion deems appropriate.

3. Respondent shall pay to Petitioner as and for child support the sum of $700.00 per month commencing January 1, 1995 pursuant to the Child Support Order signed this date.

4. Petitioner shall be entitled to claim Aaron as a dependent for income tax purposes for tax year 1994 and all years subsequent thereto.

5. Respondent shall pay to Petitioner as and for spousal maintenance the sum of $1,000.00 per month commencing January 1, 1995.

6. Petitioner is awarded as her sole and separate property all right, title and interest in and to the following investments, bank and/or retirement accounts:

A. Fidelity Latin American Fund (7,926.390 shares valued at $92,659.49 as of January 17, 1995);

B. Fidelity Southeast Asia Fund (15,644.564 shares valued at $186,639.64 as of January 17, 1995);

C. Fidelity U.S. Government Reserves (balance unknown);

D. Waterhouse Securities, Inc., account no. 301-10632 (approximate value as of February 22, 1995 - $120.00);

E. Waterhouse Securities, Inc., IRA-SEP account no. 301-10633 (approximate value as of February 22, 1995 - $1,410.00);

F. Waterhouse Securities, Inc., IRA account no. 301-10634 (approximate value as of February 22, 1995 - $13,529.00);

G. CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account (approximate value $10,116.71);

H. CREF Supplemental Requirement Annuities, certificate no. J091114-7, Global Equities Account (approximate value $424,055.24);

I. TIAA Transfer Payout Annuity, contract no. IE42653-2 approximate value $36,654.54);

J. Petitioner's State of Arizona Retirement (approximate value $230.00);

K. Petitioner's automobile 1989 Honda Accord;

L. All personal property in Petitioner's possession;

M. All bank accounts standing in Petitioner's name;

N. All bank accounts standing in Aaron's name.

7. As to those items set forth in ¶ 6 (G), (H) and (I) above, all right, title and interest shall be transferred to Petitioner by a Qualified Domestic Relations Order. The Court retains jurisdiction to enter such other QDRO's or other orders as are necessary to assure transfer to Petitioner of the property awarded to her hereunder.

8. Respondent is awarded all right, title and interest in and to his pension and/or retirement plan through the State of Ohio, current balance unknown.

9. The Court retains jurisdiction pursuant to A.R.S. § 25-318(B) to divide additional marital property which remains unknown by Petitioner and undisclosed by Respondent.

10. Respondent shall pay and hold Petitioner harmless from all debts of any kind or nature incurred by the parties during marriage, including all tax liability, whether incurred in his name, Petitioner's name or both names except for the following:

A. loan from Bernice Mennis to Susan Chalker in the principal sum of $7,300.00;

B. those certain credit card debts set forth in Petitioner's spousal affidavit dated November 4, 1994.

11. Judgment is entered in favor of Petitioner and against the Respondent in the sum of $4,800.00 as and for

maintenance accrued from January 1 to March 1, 1995 in the sum of $3,000.00.

13. Petitioner is entitled to payment of her attorneys' fees and costs incurred in this matter and judgment thereon shall be entered by this Court by separate judgment or order upon filing by counsel for petitioner of appropriiate affidavits pursuant to *China Doll, Inc. v. Schweiger.*

14. Interest shall run on all monies adjudged to be owing Petitioner from Respondent at the legal rate of interest from entry of judgment until paid in full.

DONE IN OPEN COURT this 14th day of March 1995.

_____

Honorable Joseph R. McDonald
Pima County Superior Court

Appendix 10.

Delivered by
Federal Express
3/29/95

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

In Re Marriage of	)	
SUSAN RUTH CHALKER,	)	
Petitioner,	)	No. D-103065
VS.	)	
ROBERT S. CATZ,	)	
Respondent.	)	
	)	

RESPONDENT'S MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondent hereby moves the Court for an Order permitting him to prosecute this case in forma pauperis as provided by Boddie v. Connecticut, 401 U.S. 371 (1969), and attaches an affidavit in support thereof.

Respectfully submitted,

Robert S. Catz
1402 17th Avenue
Nashville, Tennessee 37212
(615) 298-4706

Respondent, Pro Se

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

In Re Marriage of	)	
SUSAN RUTH CHALKER,	)	
Petitioner,	)	No. D-103065
VS.	)	
ROBERT S. CATZ,	)	
Respondent.	)	
	)	

AFFIDAVIT

COUNTY OF DAVIDSON) SS.
STATE OF TENNESSEE)

The respondent, Robert S. Catz, being first duly sworn, in support of his Motion for Leave to Proceed In Forma Pauperis states as follows:

1. that he is the respondent in this action;

2. that this action is a proceeding for divorce;

3. that he has less than $500.00 in available assets at his disposal, besides an automobile, wearing apparel and furnishings in storage;

4. that because of insufficient means he is unable to pay the costs of this action nor give security for the costs of this action.

Respectfully submitted,
Robert S. Catz, Respondent Pro Se

SUBSCRIBED AND SWORN before me, this 27 day of March, 1995.

_____
Notary Public

My Commission Expires on _____

CERTIFICATE OF SERVICE

I certify that on this 29th day of March, 1995, I caused to be served via first class U.S. Mail, postage prepaid, a true and correct copy of the foregoing Motion to Proceed In Forma Pauperis on counsel for the petitioner:

Leonard Karp, Esquire
Karp, Stolkin & Weiss, P.C.
1800 Bank of America Plaza
33 North Stone Avenue
Tucson, Arizona 85701
(602) 789-3339

_____
Robert S. Catz

Appendix 11.

Portion of Verified Petition for Special Action, Catz v. Chalker, et al, No. 2-CA-SA-00951 (Ariz. App. Div. Two filed April 1, 1996) at para. 43.

43. The effect of Judge Alfred's December 1, 1994 off-the-record ex parte temporary restraining order seizing all of petitioner's assets and subsequent orders issued by Commissioner McDonald and the refusal by the Clerk of the Superior Court to accept petitioner's pro per pleadings combined has:

(a) unconstitutionally denied petitioner the financial ability to defend himself with the assistance of retained compensated counsel in order to defend the action and participate in any meaningful way in the proceedings below. Martin v. Lauer, 686 F.2d 24, 32 (D.C. 1982) (while private litigants must ordinarily pay their own legal fees, they have an undeniable right to retain counsel to assert their legal rights); Potaschnick v. Port City, 609 F.2d 1101, 1117-19 (5th Cir. 1980);

(b) unconstitutionally denied petitioner the fundamental right to seek either full or joint custody of his minor son or to seek reasonable visitation. Santosky v. Kramer, 455 U.S. 745, 753 (1982); Smith v. Organization of Foster Families, 431 U.S. 816 (1977); Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Commissioner McDonald made no effort to consider the views of petitioner's 15 year old son regarding these important matters nor did he apply *any* of the required statutory factors governing child custody determinations as required by A.R.S. § 25 322(a) (2).

Bailey v. Bailey, 412 P.2d 480 (Ariz. App. 1966). Further-more, petitioner was denied reasonable visitation rights without the specific findings required under A.R.S. § 25-337(A). Sholty v. Sherill, 632 P.2d 268 (Ariz. App. 1981). Nor were the views of petitioner's child ever considered on matters related to visitation Bryan v. Bryan, 645 P.2d 1267 (Ariz. 1982). as a result of the decree respondent Chalker has not allowed petitioner to have any visitation with his son who he has not seen since December, 1994.

(c) unconstitutionally deprieved [sic] petitioner of significant liberty and property interests without notice and opportunity to be heard, and that as a direct and proximate cause of the proceedings below petitioner has become homeless, has suffered extreme financial ruin, has been unable to financially support himself and his minor child, has been forced to give up his apartment in Tucson, which was located equidistant from his son's residence and school, has been forced to cease operation of his business in Tucson for want of operating capital, has been forced to place his belongings in storage which is now subject to a warehouseman's lien for non-payment of storage fees, has been unable to access his business records requested in discovery, has been unable to travel to Tucson for hearings and depositions, has been unable to underwrite the expenses of bringing in out-of-state witnesses to support his defense, which compelled petitioner to relocate to Nashville, Tennessee where he has resided since February 1995 with his 28 year old son in a small one-bedroom apartment.

* * * *

In sum, it is clear given the value our legal system places of the Full Faith and Credit Clause in promoting finality of proceedings in a national system of parallel state and federal courts, prudential considerations, judicial caution and restraint and the comity one sovereign sister state owes to another jurisdiction would ordain that a reviewing court has no jurisdiction even in default proceedings to invalidate a decree of a sovereign sister state without first undertaking a studious examination of the state court record, and applying the applicable law of the foreign court before accepting or declining to give that decree full faith and credit. Furthermore, a default judgment is subject to collateral attack under the due process clause where entered improperly as a punishment for contempt Hovey v. Elliott, 167 U.S. 409 (1897); or where there is no evidence presented to support the order and the procedural defects in the proceedings are so unfair as to constitute a violation of due process as to deprieve [sic] the proceedings of its vitality, Eagles v. United States, 329 U.S. 304, 314 (1946); or where the procedural irregularities are serious enough to be deemed "jurisdictional". Yale v. National Indemnity Co., 602 F.2d 642, 644 (4th Cir. 1979); Bass v. Hoagland, 172 F.2d 642, 644 (5th Cir. 1949) (judgment reached without due process of law is without jurisdiction and void and may be attacked collaterally by resistance to its enforcement if a civil judgment)); Fehlhaber v. Fehlhaber, 681 F.2d 1015 (5th Cir. 1982)) (judgment rendered in violation of due process is void and need not be enforced). Article IV § 1, 28 U.S.C. § 1738 and the 14th amendment command nothing less than the invalidate of the court orders below.

Appendix 12.

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

May 2, 1996

RE: ROBERT S. CATZ v. CHALKER; ET AL.
2 CA-SA 96-0051
Pima County Superior Court Cause No. D-103065

The following action was taken by the Court of Appeals for the State of Arizona, Division Two, Department B on May 2, 1996

ORDERED: The Court declines to accept jurisdiction.

FURTHER ORDERED: Real Party in Interest's request for fees and costs is GRANTED upon the filing of the verified statement of cost pursuant to Ariz. R. Civ. App. P. 21(c).

Presiding Judge Espinosa, Chief Judge Druke and Judge Hathaway participated in the determination of this matter.

JOYCE A. GOLDSMITH, Clerk

Appendix 13.

Portion of Petition for Review to the Arizona Supreme Court, Catz v. McDonald, et al, No. CV 96-0358 (Ariz. Sup. Ct. filed May 17, 1996)

III. ISSUES PRESENTED TO THE COURT OF APPEALS BUT NOT DECIDED

Petitioner presented to the court of appeals the following issues of constitutional law that were neither considered nor decided which petitioner presents to the Court for review:

A. Whether Arizona's statutory scheme, A.R.S. I 25-315D and 25-315F which authorizes in dissolution proceedings, the pre-judgment seizure of property without prompt notice and opportunity for some kind of "expeditious" post-seizure hearing and without requiring security to protect individuals against wrongful attachments affected by sequestration to be served with notice by legal process, are unconstitutional under Connecticut v. Doehr, 501 U.S. 1 (91), State v. B Bar Enterprises, 133 Ariz. 99, 649 P.2d 978 (1982) and Mullane v. Hanover Central Bank and Trust, 339 U.S. 306 (1950).

B. Whether a December 1, 1994 temporary restraining order without notice issued under color of A.R.S. §§ 25-315D and 25-315F which merged into a final judgment by default entered by the Superior Court of Pima County on March 13, 1995 some 114 days after the initial seizure, resulting in the permanent taking of property without any opportunity for some kind of immediate, prompt and expeditious post-seizure notice and hearing are void for want of due process for combined procedural and constitutional irregularities under Cravins, Dargen & Co. v. Superior Court, 153 Ariz. 474, 737 P.2d 1373 (1987) and

Phoenix Metals, Inc. v. Roth, 79 Ariz. 106, 284 P.2d 645 (1954).

Appendix 14.

October 25, 1996
RE: ROBERT S. CATZ vs. COMM. JOSEPH MCDONALD-PIMA CO SUP
CT/
SUSAN R. CHALKER et al
Supreme Court No. CV-96-0358-PR
Court of Appeals No. 2 CA-SA 96-0051
Pima County No. D-103065

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 25, 1996, in regard to the above-referenced cause:

ORDERED: Petitioner's Motion for Leave to File Supplement to Appendix in Support of Petition for Review = GRANTED.

FURTHER ORDERED: Petition for Review by the Supreme Court = DENIED.

FURTHER ORDERED: Request for Sanctions [Real Party in Interest Susan R. Chalker] = DENIED.

FURTHER ORDERED: Request for Attorneys' Fees [Real Party in Interest Susan R. Chalker] = GRANTED.

FURTHER ORDERED: Request for Attorneys' Fees [Real Party in Interest TIAA-CREF] = GRANTED.

A panel composed of Chief Justice Feldman, Vice Chief Justice Zlaket, and Justice Jones participated in the determination of this matter.

Record returned to Court of Appeals, Division Two, Tucson, this 25th day of October, 1996.

NOEL K. DESSAINT, Clerk

To:

Robert S. Catz
Annette M. Everlove, Esq., Butler & Stein PC
Leonard Karp, Esq. and Laura C. Belleau, Esq., Karp
Heurliln & Weiss PLC
Tom Slutes, Esq., Slutes Sakrison Grant Hill & Rubin PC
Michael J. Rusing, Esq., Rusing & Lopez PLLC
Joyce A. Goldsmith, Clerk, Court of Appeals, Division
Two
Lexis-Nexis
West Publishing Company

Appendix 15.

A.R.S. § 25-315

A. In all actions for the dissolution of marriage or for legal separation, the clerk of the court shall pursuant to order of the superior court issue a preliminary injunction in the following manner:

1. The preliminary injunction shall be directed to each party to the action and contain the following orders:

(a) That both parties are enjoined from transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property of the parties except if related to the usual course of business, the necessities of life or court fees and reasonable attorney fees associated with an action filed under this article, without the written consent of the parties or the permission of the court.

(b) That both parties are enjoined from molesting, harassing, disturbing the peace of or committing an assault or battery on the person of the other party or any natural or adopted child of the parties.

(c) That both parties are enjoined from removing any natural or adopted child of the parties then residing in Arizona from the jurisdiction of the court without prior written consent of the parties or the permission of the court.

2. The preliminary injunction shall include the following statement:

"Warning"

This is an official court order. If you disobey the court may find you in contempt of court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

You or your spouse may file a certified copy of this order with your local law enforcement agency. A certified copy may be obtained from the clerk of the court that issued this order. If you are the person that brought this action, you must also file evidence with the law enforcement agency that this order was served on your spouse.

This court order is effective until a final decree of dissolution or legal separation is filed or the action is dismissed."

3. The preliminary injunction shall be effective against the petitioner upon filing the petition and against the respondent upon service of a copy of the order. In the event of service by registered mail under the rules of civil procedure, the order shall be effective upon receipt of the order. The order shall remain effective until further order of the court or the entry of a decree of dissolution or legal separation.

4. At the time of filing the petition for dissolution or legal separation, the copies of the preliminary injunction shall be issued to the petitioner or the agent, servant or employee filing the petition for dissolution or legal

separation. The petitioner shall be deemed to have accepted service of the petitioner's copy of the preliminary injunction and to have actual notice of the contents thereof by filing or causing to be filed a petition for dissolution or legal separation. The petitioner shall cause a copy of the preliminary injunction to be served upon the respondent together with a copy of the summons and petition for dissolution or legal separation.

5. The preliminary injunction shall have the force and effect of an order of the superior court signed by a judge and shall be enforceable by all remedies made available by law, including contempt of court. The provisions of rules 65(a)(1) and 65(e) of the rules of civil procedure shall not be applicable to the preliminary injunction.

B. In a proceeding for dissolution of marriage, for legal separation or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child, natural or adopted, common to the parties entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts

C. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction for any of the following relief:

1. Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result.

2. Providing other injunctive relief proper in the circumstances.

D. The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No bond shall be required unless the court deems it appropriate.

E. On the basis of the showing made, and in conformity with sections 25-318 and 25-319, the court may issue a preliminary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstances. The court may also make temporary order respecting the

F. A temporary order or preliminary injunction:

1. Does not prejudice the rights of the parties or any child which are to be adjudicated at the subsequent hearings in the proceeding.

2. May be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 25-327 and as provided in rule 65 of the rules of civil procedure.

3. Terminates when the final decree is entered or when the petition for dissolution or legal separation is dismissed.

G. A person who disobeys or resists an injunction issued pursuant to subsection A, paragraph 1, subdivision (b) or subsection C, paragraph 1 of this section is subject to arrest and prosecution for interference with judicial proceedings pursuant to section 13-2810 and the following procedures apply:

1. Any party may cause a certified copy of the injunction and return of service on the other party to be registered with the sheriff having jurisdiction of the area in which the party resides. The party originally registering the injunction shall register any with such sheriff. For enforcement by arrest and prosecution for interference with judicial proceedings, a certified copy of the injunction, whether or not registered with such sheriff, is presumed to be a valid existing order of the court until a final decree of dissolution or legal separation is entered or the action for dissolution or legal separation is dismissed.

2. A peace officer may, with or without a warrant, arrest a person if he has probable cause to believe that an offense under this subsection has been committed and he has probable cause to believe that the person to be arrested has committed the offense, whether such offense is a felony or a misdemeanor and whether such offense is a felony or a misdemeanor and whether such offense was committed within or without the presence of the peace officer. The release procedures available under section 13-3883,

paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.

3. A peace officer making an arrest pursuant to this subsection is not civilly or criminally liable for the arrest if the officer acts upon probable cause and without malice.

4. A person arrested pursuant to this subsection may be released from custody in accordance with the rules of criminal procedure or other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide additional conditions which the court deems appropriate, including participation in any counseling programs available to the defendant.

5. The remedies provided in this subsection for enforcement of the preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other.